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Supreme Court of the United States

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No. 1230

Travelers Insurance Company, Continental Casualty Company, Time Insurance Company, Edward Ernest Nelson, an Underwriter at Lloyd's of London, and Zurich Insurance Company,

Respondents,

40903-4-5 and 40907-8

vs.

T. Eugene Thompson,

Appellant,

Otto Swoboda, Spec. Admr. of Estate of Carol S. Thompson, deceased, et al,

Respondent,

Otto Swoboda, Spec. Admr. of Estate of Carol S. Thompson, deceased, et al,

Respondent,

and

T. Eugene Thompson,

Appellant,

40906

vs.

General Accident Fire & Life Assurance Corporation, Ltd.,

Respondent.

Additional Special Respondent: Douglas Head, Attorney General, State of Minnesota,

Respondent.

APPEAL JURISDICTIONAL STATEMENT

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INDEX

	PAGE
Jurisdictional Statement	2
Jurisdiction	2
Minnesota Statute Involved	2
Constitutional Provisions	3
Constitutional Amendments	3
Questions Presented	4
Statement of the Case	7
Cases Cited As Controlling	26
Texts Cited As Controlling	27
The Federal Questions Are Substantial	28

AUTHORITIES CITED

	PAGE
Statutes:	
Laws of Minnesota, 1917, Chapter 353	2
Laws, 1967, Chap. 3361, M.S.A. 590.01	32
M.S.A. 525.87	2, 5, 6, 16, 18, 31
M.S.A. 631.471	33
Rule 24.04 of the Minnesota Rules of Civil Procedure	33
Constitutional Provisions:	
Article I, Sect. 10	3
Article IV, Sect. 2	3
Constitutional Amendments:	
Article the Fifth	3
Article the Seventh	4
Article the Ninth	4
Article the Fourteenth, Sect. 1	4
Cases:	
Thompson v. Tahash, 286 F. Supp. 633 (1968)	5, 27, 32

PAGE

United States v. Jackson, 36 U.S. Law Week 4277, 390 U.S. 570, 20 L. Ed. 2d 138 (Pamphlet) 88 S. Ct. 1209, April 8, 1968 26

Hollington v. Hewthorn and Company Ltd., Law Reports (1943) King's Bench Div. 587 at page 600 ..... 26, 28

In re Johnston's Estate, 220 Ia. 328, 261 N.W. 908 (1935) 26, 28

Teitelbaum Furs, Inc. v. Dominion Insurance Company, 25 Cal. Rptr. 559, 375 P. 2d 439 at 442 (1962) 26, 30

Sheppard v. Maxwell, 384 U.S. 333, 16 L. Ed. 2d 600, 86 S. Ct. 1507 (June 6, 1966) 26, 30

State v. Thompson, 266 Minn. 385, 123 N.W. 2d 378 (September 13, 1963) 9, 26

State v. Thompson, 273 Minn. 1, 139 N.W. 2d 490 (January 7, 1966) 16, 27, 30, 34

State v. Thompson, 273 Minn. 1, 139 N.W. 2d 490 (January 7, 1966), Petition for Writ of Certiorari to United States Supreme Court, denied, October 10, 1966, 385 U.S. 817, 87 S. Ct. 89, 17 L. Ed. 2d 56 ..... 27, 30

United States v. Carver, 260 U.S. 482, 490, 43 S. Ct. 181, 182 27

Fay v. Noia, 372 U.S. 391, 83 S. Ct. 822, 9 L. Ed. 2d 837 27

Townsend v. Sain, 372 U.S. 293, 83 S. Ct. 745, 9 L. Ed. 2d 770 27

Sanders v. United States, 373 U.S. 1, 83 S. Ct. 1068, 10 L. Ed. 2d 148 27

PAGE

Bruton v. United States, (No. 705 – October Term 1967) (May 20, 1968) 391 U.S. 123, 88 S. Ct. 1620, 3 CrL 3085 at p. 3087 (footnote), (May 22, 1968) 27, 34

Poindexter v. Greenhow (1885) 114 U.S. 270, 29 L. Ed. 185 ..... 27, 37

Giles v. Maryland, 386 U.S. 66 at p. 100 (1966), 87 S. Ct. 902, 17 L. Ed. 2d 778 ..... 27, 35

Chapman v. Minnesota (File No. 41285, Docket No. 203, filed November 1, 1968) — Minn. — 162 N.W. 2d 698 33

Texts:

Restatement, Judgments, Sec. 41, p. 2 27

The Forgotten Ninth Amendment by Bennett B. Patterson (1955), The Bobbs-Merrill Company, Inc., Publishers, Indianapolis, Indiana 27, 36

Clinical Laboratory Methods and Diagnosis, Gradwohl, 1963, Vol. 2 (1450-53) 27

INDEX TO APPENDIX

PAGE

Notice of Appeal to the United States Supreme Court including a request by appellant to the Clerk of the Minnesota Supreme Court to certify and then transmit the Record herein to this Court ..... A-1 - A-3

Judge Sylvestre's Order and Memorandum denying respondent insurance companies' motion for summary judgment against the appellant dated April 19, 1967 ..... A-3 - A-26

Minnesota Supreme Court's Opinion reversing the order of Judge Sylvestre and granting the motion for summary judgment against the appellant filed October 25, 1968, — Minn. —, — N.W. 2d — ..... A-26 - A-31

PAGE

Appellant's Petition For Rehearing to the Minnesota Supreme Court ..... A-40 - A-49

Appellant's Supplemental Petition For Rehearing to the Minnesota Supreme Court ..... A-49 - A-53

Minnesota Supreme Court's Summary Order denying appellant's petition for rehearing dated and filed January 14, 1969 ..... A-53 - A-54

Appellant's Petition For Post-Conviction Relief dated Sept. 13, 1968, together with the Order and Memorandum of Chief Judge Edward Devitt, U.S. District Court, District of Minnesota, Third Division, dated May 7, 1968 ..... A-54 - A-65

Appellant's Supplemental Petition For Post-Conviction Relief dated Feb. 10, 1969 ..... A-66 - A-68

Dick W. C. Anderson's recantation letter (unfinished) to the Governor of Minnesota discovered on his person by the Minnesota State Prison authorities on July 5, 1964 ..... A-68 - A-74

Dick W. C. Anderson's recantation under oath to appellant's attorney at the prison on July 8, 1964 ..... A-74 - A-138

Affidavit of Warden Tahash of the Minnesota State Prison dated Feb. 11, 1969, and on file with Judge Amdahl, Hennepin County District Court, in the current hearing for post-conviction relief ..... A-139 - A-140

Blood Report—St. Paul Police Criminologist, T. Elzerman—Newly Discovered Evidence ..... A-141 - A-142

Affidavit of Norman J. Mastrian ..... A-143 - A-144

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40906

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General Accident Fire & Life Assurance Corporation, Ltd.,

Respondent.

Additional Special Respondent: Douglas Head, Attorney General, State of Minnesota,

Respondent.

APPEAL JURISDICTIONAL STATEMENT

This is an appeal from a decree of the Minnesota Supreme Court reversing the trial court's order of April 19, 1967, and granting summary judgment against T. Eugene Thompson, the appellant; said decree being filed on October 25, 1968; and from the Minnesota Supreme Court's denial of appellant's Petition For Rehearing and Supplemental Petition For Rehearing; said denial by summary order being filed on January 14, 1969. The notice of appeal and request for certification of the record and transmission of the same to this Court was filed with the Clerk of the Minnesota Supreme Court on March 12, 1969, together with the affidavit of service of the same upon all parties herein.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Title 28, Sec. 1257 (2).

MINNESOTA STATUTE INVOLVED

Original Statute: Laws of Minnesota, 1917, Chapter 353.

Minnesota Statute 525.87 (1961) provides: "No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent, or take by devise or bequest from him any portion of his estate. No beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organizations, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a dis-

ability of such person, shall take the proceeds of such policy or certificate; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued."

CONSTITUTIONAL PROVISIONS

ARTICLE I, Sect. 10. No State shall enter into any treaty, alliance, or confederation, grant letter of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex-post-facto law, or law impairing the obligation of contracts; or grant any title of nobility.

ARTICLE IV, Sect. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

CONSTITUTIONAL AMENDMENTS

ARTICLE the FIFTH. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of life, liberty, or

property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE the SEVENTH. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE the NINTH. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE the FOURTEENTH. Sect. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the united States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS PRESENTED

I

Did Minnesota deprive appellant of his Constitutional right to property without due process of law; deny him his Constitutional right to equal protection of the law; deny him his Constitutional right to trial by jury; and/or impair the obligations of contract between appellant and respondent insurance companies as prohibited by the Constitution; by applying the doctrine of "collateral estoppel" or "estoppel by verdict" to order summary judgment against appellant in this civil matter based upon appellant's prior criminal conviction for murder first degree?

II

Does M.S.A. 525.87 (1961), as presently interpreted by the Minnesota Supreme Court (a case of first impression for Minnesota), impair the obligation of contracts between the appellant and respondent insurance companies as prohibited by the Constitution?

III

Is the criminal conviction final as concluded by the Minnesota Supreme Court when it has affirmed the appellant's appeal from said conviction and a Petition For Certiorari to this Court has been denied; when the appellant has thereafter filed for a Writ of Habeas Corpus in the Federal Court for the District of Minnesota (Thompson v. Tahash, 286 F. Supp. 633, 1968) and by that court has been ordered to seek relief in the Minnesota State Courts pursuant to a recently enacted Post-Conviction Remedy Statute by the Minnesota Legislature (a statute enacted subsequent to the Minnesota Supreme Court's affirmance of appellant's conviction) and which action by appellant is presently being heard by the State District Court (Hennepin County) pursuant to said Federal District Court Order; and which order, when entered by the Minnesota District Court at the conclusion of the present hearing, may be appealed to the Minnesota Supreme court by either the State or the appellant?

IV

Did Minnesota deny to appellant his Constitutional right to natural justice embraced within the Ninth Amendment when it used a criminal conviction based solely upon hearsay;

obtained in an environment of a community envenomed by massive and prejudicial pre-arrest and indictment, pre-trial, and trial publicity engendered and encouraged by local law authorities who were aided and abetted by representatives of the respondent insurance companies; a conviction subject to attack by newly-discovered and substantially exculpatory evidence which had been concealed and withheld by the prosecution authorities from the trial court and defense counsel and appellant; and appellant having been denied the right to competent counsel; when Minnesota used such a conviction to grant summary judgment against him in this civil matter; and when the conviction is presently under attack through normal and consistent channels of due process?

V

Does M.S.A. 525.87 (1961), as presently interpreted by the Minnesota Supreme Court, deny appellant his right to property as guranteed to him by the Ninth Amendment and the Fourteenth Amendment by denying him the right to fair treatment and due process under the law since the respondent insurance companies would not have been bound by any verdict of innocence in the criminal trial of appellant?

VI

Has Minnesota denied to appellant his Constitutional rights to natural justice, due process, fair and equal treatment, to property, to a right to trial by jury of the issues herein; when it applies the doctrine of "collateral estoppel" to grant summary judgment against the appellant when it could not do so had the appellant pled guilty rather than defended against the criminal charge as he did and is in fact still doing?

STATEMENT OF THE CASE

Carol Thompson, appellant's wife, was brutally assaulted in their home located in St. Paul, Ramsey County, Minnesota, on March 6, 1963. She died as a result of this vicious attack upon her person within a few hours thereafter at 12:58 P.M.

The respondent insurance companies had issued several renewable term and accident policies with the named insured being Carol Thompson and the owner and primary beneficiary being T. Eugene Thompson. The total amount of these policies amounted to $1,055,000.00 if the insured died by accidental means or $200,000.00 if death occurred under normal circumstances. The respondent insurance companies conducted a full and complete background report of the Thompsons before issuing these policies assuring themselves of the health of Mrs. Thompson and the character and community and financial standing of the Thompsons. These policies were in full force and effect on the day she was killed.

The appellant appeared before the first grand jury which met to investigate the circumstances surrounding the death of Carol in the latter part of April, 1963, after directing his request to meet with them to the foreman of said grand jury and after waiving his constitutional rights. This grand jury returned indictments for murder against others but publicly cleared and thanked the appellant for his cooperation. One of the persons indicted by this grand jury was Dick W. C. Anderson for Murder 1st.

Commencing immediately upon the death of Carol a publicity campaign was conducted against the appellant by means of news broadcasts, TV reports, newspaper articles, and rumors of the most vicious and vile nature, filled with lies, slander libel, suggestion and innuendo, attacking the character and

reputation of the appellant and suggesting that he was responsible for his wife's death. This attack increased in tempo following the fact of appellant's being cleared and thanked by the first grand jury to investigate the circumstances of his wife's death. The sources of many of these statements of attack upon the appellant came from the police and prosecution officials responsible for the investigation into the facts surrounding her death. The attack was successful. The appellant's law practice was ruined, he was verbally assaulted with cries of "Murderer", "Beast", spat upon, the receiver of hate letters and calls and in a state of total public disrepute by the time he was arrested on June 21, 1963, following a statement given to the authorities by Dick W. C. Anderson on June 20, 1963.

The appellant was indicted for Murder 1st by the second grand jury convened to investigate the death of Carol and the only new witness to appear before this grand jury was Larry McMullin, a deputy sheriff, who purportedly told of the contents of the Anderson statement. Neither Anderson nor appellant appeared before this second grand jury. The appellant asked to appear but his request was ignored since he was then in the county jail of Ramsey County. The indictment was dated June 25, 1963.

Following his arrest about 12:30 A.M. on June 21, 1963 the appellant was arraigned in the Municipal Court of St. Paul, Minnesota on June 21st and requested a preliminary hearing which was set far enough ahead so that the grand jury could meet before then, and if an indictment were returned, as it in fact was, then appellant would not be permitted to conduct nor have a preliminary hearing. Bond was also set in the amount of $100,000 even though appellant was an outstanding citizen of the community and a leader of the bar in Minnesota, (chairman of the criminal law committee, member of the

board of governors for the bar, vice chairman of the trial lawyers association, etc.). Being unable to raise the bond immediately he was lodged for several days in the county jail.

A request for a change of venue was denied by the District Court of Ramsey County but the Minnesota Supreme Court on Sept. 13, 1963, granted a writ of mandamus and the matter was transferred to Hennepin County for further proceedings in the District Court in Minneapolis, Minnesota. The writ was granted due solely to the amount and content of the publicity in a vain attempt to lessen the impact of it upon the appellant's chances for a fair trial. State v. Thompson, 266 Minn. 385, 123 N.W. 2nd 378.

The trial was commenced on Oct. 28, 1963, and a verdict of guilty was returned by the jury on Dec. 6, 1963. Appellant was immediately sentenced to the mandatory sentence of life in prison required by the laws of Minnesota where he is and has been continuously therefrom confined.

During the selection of the jury the appellant requested of his attorney that he make a request for a change of venue again in chambers and was assured by his attorney that this was done. He also requested the attorney to make a motion for mistrial following the death of President Kennedy on Nov. 22, 1963 in chambers and was assured by his attorney that this too was done. These are the only two requests that the appellant made of his attorney since he had promised from the beginning of the relationship not to interfere but to be and remain just a client. He also agreed not to retain the investigators for the defense but to allow his attorney to do so. A credit of up to $100,000 was made available to his attorney for this purpose alone, exclusive of the funds paid according to agreement for the attorney's fees. Following his conviction, appellant learned that the motions for change of venue and mistrial

were not in fact made since they were not of record and that no investigation by competent investigators was made, in fact none of the $100,000 available for this purpose was used.

During the trial Dick W. C. Anderson stated that he killed Carol Thompson and that he did so for $200 DOWN AND THE BALANCE FOR CREDIT OF $2700 at the request of one Norman Mastrian, a client of T. Eugene Thompson the appellant; that he met Mastrian for the first time on the day that these arrangements were allegedly made; that he had never met nor spoken to Thompson. This testimony followed soon after the death of President Kennedy during the trial. The import and relationship and the effect it had upon the jury is obvious—and detrimental to a fair trial for Thompson.

Anderson was not supported in this hearsay declaration allegedly made by Thompson by any witnesses nor was the fact of such a meeting between Anderson and Mastrian supported by any witnesses thereto. Proper and timely objection was made but overruled by the trial court.

In support of Anderson's testimony, testimony was received over objection from four witnesses (Morris, Butler, Sharp and Ingram) who each stood to be sentenced to life in prison if their testimony was to be believed or if they were convicted or any of the charges pending against them were sustained. Each witness in one manner or another testified to hearsay declarations allegedly made by Mastrian. THERE WAS NO DIRECT EVIDENCE AGAINST THOMPSON IN THE ENTIRE TRIAL. Butler, Sharp and Ingram testified that they had never met nor spoken with Thompson. Morris testified that he had met Thompson when Mastrian was a client of his on two occasions but had not spoken with Thompson except to be introduced, once at Thompson's law office (reception room) and once in Mastrian's home when Thompson stopped in to confer with

Mastrian in private, while on his way to Anoka, Minnesota, in connection with the Mastrian case he was handling; to wit: a civil action for false arrest against local law authorities and crime bureau agents.

Mastrian was tried and convicted during April, 1964. However, during his trial evidence came to light which was not available during the Thompson trial, such as:

On the night that Anderson and Mastrian allegedly met to plan the murder Mastrian was in fact with others who testified to this fact. That Anderson was a known burglar and several witnesses who knew him and worked with him testified to this fact which Anderson denied during the trial of Thompson. That in fact the Thompson home had been set up for a burglary as testified to by these witnesses. (Appellant had hoped to be able to provide this Court with the opinion of the Minnesota Supreme Court regarding the appeal Mastrian has filed from his conviction but no decision has yet been entered. In fact, a settled case wasn't obtained until March, 1969, and then only because a transcript was obtained by means of a writ of Habeas Corpus being filed for refusal to furnish one. (See Minnesota Supreme Court File No. 40797, July 28, 1967, —— Minn. ——, ——N.W. 2d ——.) The fact of a previous burglary of the Thompson home in Dec. 1962 was referred to in the Thompson trial.

There is no real dispute in the fact that Thompson and Mastrian met for the first time during the month of July, 1962 after all of the insurance policies herein were in full force and effect. They met as a result of Mastrian having been arrested and held in jail for several days before release and had suffered severe damages as a result of this false arrest. Thompson did not know and did not represent Mastrian at the time

of his arrest but was introduced to him by another client of Thompson's following his arrest and release.

On Dec. 20, 1967 appellant appealed to the Minnesota Supreme Court his conviction and all adverse judgments of the district court.

Thereafter, in all but one instance which was a suit by Thompson against the insuror, General Accident, declaratory judgment actions were brought by the respondent insurance companies against appellant, T. Eugene Thompson (designated beneficiary and owner), the representative of the estate of Carol S. Thompson (the insured), and the children of appellant to determine their liabilities on contracts of insurance. Counterclaims by Thompson were filed to recover the proceeds of the policies.

On Aug. 4, 1964, the Minnesota Supreme Court remanded the criminal case to the district court of original trial for consideration of a motion for new trial alleging newly discovered evidence. The main thrust of this evidence being a recantation of the testimony given at the Thompson trial by Dick W. C Anderson, the admitted killer of Carol S. Thompson.

Following the Mastrian trial and prior to the recantation of Anderson in July; 1964, all of the other main witnesses to allegedly hearsay statements of Mastrian admitted into evidence in the Thompson trial over objection were released from custody. Butler—a suspended sentence; Morris—a suspended sentence; Sharp—after a trial by the court without a jury whereby it became obvious that he had only given a statement

of a burglary in Ramsey County that he made, as he stated, to accommodate Lt. Barkley of the St. Paul police department so that he could escape punishment for a burglary that he had committed in Anoka (which charge was dismissed when the Ramsey County Attorney refused to provide a copy of Sharp's confession to the burglary in Anoka), the Court declared itself unable to decide and ordered the matter submitted to a jury for trial. (Lt. Barkley did not take the stand to refute this allegation by Sharp that he gave an accommodation confession on a burglary that he did not commit in order to be removed to the jurisdiction of Ramsey County and away from Anoka County authorities.) Sharp was thereafter released period. Ingram, on parole from the federal prison for a felony, pled guilty to a crime wherein a woman was viciously pistol-whipped and he was given a suspended sentence to be returned to the federal authorities, which authorities promptly reinstated him on parole; even though this man has been in three mental hospitals for the criminally insane and viciously assaulted a doctor with a smuggled in gun in a breakout from one of the hospitals.

Anderson was sentenced to life in prison in the Minnesota State Prison and, while still in the orientation stage where his contact with other inmates is extremely limited, it was accidentally discovered by the authorities of the prison that Anderson was in the process of writing a recantation to the Governor of Minnesota explaining that he had lied when he said that he committed this crime for hire and that he did so during a burglary (robbery). Based upon this discovery, the attorney for Thompson arranged to take an official statement from Anderson in prison under oath. (See appendix to this document for copies of letter and statement of Anderson, pp. A68-74 & A74-A138.)

Essentially this statement of recantation stated that Anderson was a burglar, he killed Carol during a burglary, he did not know nor had he ever met either Thompson or Mastrian, that the witnesses during the Mastrian trial as to his being a burglar and to having committed burglaries and to having expressed an intent to burglarize the Thompson home were telling the truth; that he had lied when he said he did not know them and had lied repeatedly during the Thompson and Mastrian trials. That he had received promises from Randall, the County Attorney for Ramsey; that Randall hoped to become Governor of Minnesota by the publicity (which he subsequently tried to do); that Randall had had an *insurance investigator* prepare a good background report on him for later (which Randall has now admitted under oath); and even told who he was with in fact when he was supposed to be with Mastrian arranging this murder plan—that he was with his roommate and employer. He even admitted a willingness to undergo a polygraph examination and truth serum examination to prove he was now telling the truth.

During the trial of Thompson he stated that Thompson's father-in-law was to be a second victim later. In his recantation he admitted that this was cooked up between him and the county attorney to alienate Thompson's father-in-law who was close to Thompson and who had contributed to the $100,000 cash bail placed on Thompson so that he could be released pending the trial.

Following this recantation, Anderson was suddenly removed from the state prison by federal marshals allegedly to appear before a federal grand jury to be called to investigate possible mail fraud in the obtaining of the policies of insurance. Anderson never did appear before any such grand jury nor was any such indictment even asked for. However, during this period,

Anderson was taken back and forth daily from the Hennepin County jail in Minneapolis to the Federal Courts Building for consultations. The fact of his removal and the reason therefor was extensively and repeatedly distributed throughout the community via the newspapers, TV and radio.

At the hearing on the motion for new trial in Minneapolis in Sept., 1964, Anderson again recanted and said that his trial testimony was true. But he did not recant on promises and inducements by the prosecutor, nor on allegations of subornation of perjury by the prosecutor—nor was he asked to do so by the prosecutor.

In essence Anderson said that he made his original recantation due to threats received while in prison; from Thompson, via the grapevine and not directly, that his children would grow up and appear before him at the parole board hearing if he ever sought his release; (In Minnesota, eligibility for parole for murder 1st doesn't begin until 25 years have been served less good time earned for good behavior), from Mastrian, not directly but again via the grapevine, that he would be killed. When asked to name the carriers of such threats Anderson refused to answer and was held in contempt by the court—a useless gesture of grotesque proportion which was never imposed. Minnesota does have another institution where Anderson could have been incarcerated other than that at Stillwater, Minnesota, and which institution is used occasionally for possible safety factors. The Warden of the Prison, Warden Tahash, has, for current use in a post-conviction remedy hearing currently being held in Minneapolis, given a statement in affidavit form covering this fact and that of the alleged threats on Anderson's life and it completely refutes such threats being made or that Anderson was in fear for his life. (See appendix pp. A139-A140.)

The motion for new trial was denied and the appeal therefrom was consolidated with the other appeals on Oct. 27, 1964. On January 18, 1966, the Minnesota Supreme Court affirmed all district court judgments. State v. Thompson, 273 Minn. 1, 139 N.W. 2nd 490.

Thompson petitioned this Court for Certiorari and this petition was denied on October 10, 1966; 385 U.S. 817, 87 S. Ct. 39, 17 L. Ed. 2d 56.

A motion for summary judgment as to T. Eugene Thompson, appellant, was brought by the respondent insurance companies in the District Court for Ramsey County, St. Paul Minnesota, before Judge Sylvestre. The motion was based upon two established facts: 1) Thompson was indicted and convicted of murder 1st arising out of the death of the insured, his wife, Carol S. Thompson, on March 6, 1963. 2) Thompson was the owner and primary beneficiary of each of these policies. The motion was based on M.S.A. 525.87 (supra).

Judge Sylvestre denied the motion for summary judgment but permitted the respondent insurance companies to appeal his decision before trial by certifying the matter to the Minnesota Supreme Court on April 19, 1967. (Judge Sylvestre's order and opinion is contained in the appendix pp. A3-A26.)

Following the denial for certiorari to this Court by appellant of his conviction, Thompson filed a Writ of Habeas Corpus in the Federal District Court of Minnesota. Federal Judge Edward Devitt dismissed this writ without prejudice on the grounds that the Minnesota Courts should have a

chance to review their previous decisions considering the decision of Sheppard v. Maxwell, 86 S. Ct. 1507, (1966) decided after the Minnesota Supreme Court's opinion sustaining appellant's conviction; and due to the fact that the Legislature of Minnesota had enacted a Post Conviction Remedy Act which would permit a full evidentiary hearing allegedly similar to that which could be obtained in the Federal Court; and because the writ contained an allegation of promises and inducements not clearly set out and decided in previous rulings or hearings. Thompson v. Tahash, 286 F. Supp. 663 (1968).

In compliance with Judge Devitt's order, Thompson filed a Petition for Post-Conviction Relief with the District Court, Hennepin County, Minneapolis, Minnesota, the court of original jurisdiction for his conviction, on Sept. 13, 1968. (Appendix pp. A54-A59.)

The Minnesota Supreme Court, acting upon the certification from Judge Sylvestre in this matter of the insurance policies, reversed the lower court and granted the respondent insurance companies' motion for summary judgment against T. Eugene Thompson on Oct. 25, 1968; —— Minn. —— ——, N.W. 2d ——. (Appendix pp. A6-A9.) In essence they held that appellant's conviction was final, even though appellant has been diligently and consistently seeking relief from this wrongful conviction for murder through proper legal channels; and, even though appellant had pending before the court of original conviction a petition for post-conviction relief which when acted upon and an order entered can be appealed to the Minnesota Supreme Court by either the appellant or the State so that the Minnesota Supreme Court must necessar-

ily again rule upon the propriety of his conviction; and, even though the appellant has always asserted and does now again assert his innocence of this crime charged against him. Having determined appellant's conviction to be final, the Minnesota Supreme Court then held that the doctrine of collateral estoppel or estoppel by verdict applied to the motion for summary judgment and granted the motion, denying Thompson his right to a jury trial of the issues. This was a case of first impression for the Minnesota Supreme Court to interpret M.S.A. 525.87. .

Appellant, within the time allowed by law (10 days), petitioned the Minnesota Supreme Court for a rehearing; joining as an additional party the Attorney General for the State of Minnesota as required by the rules of civil procedure in Minnesota because the Court's opinion thus interpreted M.S.A. 525.87 in a manner which violated several Federal constitutional provisions and effectively rendered the statute to be unconstitutional; and due to the fact that a previously existing statute of Minnesota was not cited to the Court or referred to in its opinion which would prohibit the interpretation of M.S.A. 525.87 as made by the Court. (See appendix pp. A40-A49.)

The Minnesota Supreme Court summarily denied appellant's petition for rehearing on January 14, 1969. (Appendix pp. A53-A54.)

On February 10, 1969, appellant filed a Supplemental Petition for Post-Conviction Relief. (Appendix pp. A[illegible].) On that date, a hearing was commenced before Judge Douglas Amdahl, Hennepin County District Court. The hearing has not been completed and will not be for some months to come because

Judge Amdahl found a local reporter, Donald Giese, in contempt for refusing to disclose sources of his information after he had first admitted talking to local authorities in charge of the investigation of Carol's death and in charge of prosecuting those responsible for her death. The reporter's news stories are replete with quotes allegedly from local authorities, but only one of these authorities has been questioned under oath to date, that is, Chief McAuliffe of the St. Paul Police Department and he denied giving information to the reporters or making statements to them as attributed by them to him. There is no statute in Minnesota granting privilege to news reporters but Judge Amdahl did certify the question of the reporter's right to refuse to answer questions in this hearing to the Minnesota Supreme Court for their decision and opinion.

Even though the hearing has been interrupted, there is already in evidence a blood report dated the same day as the death of Mrs. Thompson prepared by the St. Paul criminologist, Theodore Elzerman, which clearly shows the presence of a third person in the Thompson home on the day in question. Carol's blood type and that of Dick W. C. Anderson is type O. The report shows the presence of B blood in several important locations in the house. In addition there is testimony in evidence which indicates that Ingram (one of the witnesses in the Thompson trial and the one who has been in several mental institutions for the criminally insane) was in the house at the time of Carol's death. County Attorney Randall has been a witness at this hearing and he stated that he did not consider the blood report of any value since it did not aid him in his investigation. This blood report was not disclosed to the Court or to the attorneys for Thompson at the time of this trial and in fact was not discovered to exist until this hearing,

although suspicion of its existence was known shortly before the commencement of the hearing.

The types of human blood are determined by establishing the presence or absence of substances known as agglutinogens and agglutinins (antibodies). The agglutinogens are classified as A and B and special O. The agglutinins are anti-A (alpha) and anti-B (beta).

Group O blood contains special O agglutinogen, but neither A nor B. It has both anti-A (alpha) and anti-B (beta) agglutinin.

~~Group O blood contains special O agglutinogen, but neither A nor B. It has both anti-A (alpha) and anti-B (beta) agglutinin.~~

Group B blood contains B agglutinogen and anti-A (alpha) agglutinin. (Gradwohl, Clinical Laboratory Methods and Diagnosis, 1963, Vol. 2, 1450-53).

Therefore, blood containing agglutinogens (except special O) but no agglutinin is not type O blood. The T shirt, boxer shorts and pullover shirt found in the bedroom showed the absence of agglutinins and the presence of agglutinogens. Since these stains were not positively identified as Type O, the agglutinogen discovered had to be either A or B or both—in which case the blood could not have been Type O since Type O has neither A nor B agglutinogens.

This blood then could not have been Type O, the type of both the victim, appellant's wife, and the perpetrator, Dick W. C. Anderson.

To summarize:

1. The blood contained agglutinogens.

2. If the agglutinogen had been O, the blood would have been identified as O blood.

3. It was not so classified.

4. Therefore, the agglutinogens must have been A or B or both, in which case,

5. It was not Type O blood.

The blood on the bedroom drawer pulls and in the kitchen was identified as [redacted] Type O with a weak beta agglutinin factor, or as Type B, which last would indicate blood with an alpha but no beta agglutinin factor.

The presence of blood of Type B or any other type than Type O indicates the presence of a person other than Anderson or appellant's wife, and raises reasonable doubt as a matter of law as to the assertion by the State that only Anderson and appellant's wife were present in the home at the time of this attack resulting in her death.

THERE WERE NO TESTS MADE TO DETERMINE THE BLOOD TYPE OF ANYONE EXCEPT THESE TWO PERSONS, ANDERSON AND APPELLANT'S WIFE (CAROL S. THOMPSON—THE VICTIM). BUT THERE IS NOW NEWLY DISCOVERED EVIDENCE THAT INGRAM WAS ALSO IN THE HOUSE AT THE TIME OF THIS ATTACK! But the County Attorney Randall, under oath at the present hearing in Minneapolis, said he did not consider this blood report to be important. And he did not disclose its existence to either the court, the defense attorneys or the appellant.

It is impossible not to wonder why more blood samples were not taken at the house, why all of the samples taken were not classified where possible, and why the blood types of Sharp, Ingram, Morris and Butler were not determined. THIS COURT IS DIRECTED TO THE FACT THAT ANDERSON IN HIS RECANTATION IN JULY 1964, STATES THAT MORRIS HAD BURGLARIZED THE THOMPSON HOME IN DECEMBER, 1962, JUST THREE MONTHS BEFORE

THIS ATTACK ON CAROL WHICH HE SAID WAS ALSO DURING ANOTHER BURGLARY!

Elzerman, the criminologist, during the Mastrian Trial (which occurred following the conviction of appellant) was asked the following questions: Mastrian Record p. 2890.

Q. Did you, in your investigations, determine the blood types of any other than Carol Thompson?

A. Yes, sir.

Q. Could you determine the blood types of what individual? You, yourself?

A. Mr. Anderson.

Q. What was his blood type?

A. Type O.

Q. And did he have a weak beta factor?

A. *I did not examine it.* (Emphasis added.)

Q. Did you test anyone else? Did you make any tests for anyone with Type B blood?

A. In connection with this investigation?

Q. That's right.

A. No, sir.

The suppressed, exculpatory evidence, of this blood report of Elzerman is attached as an exhibit to this document: Appendix pp. A141-A142.

County Attorney Randall has also admitted at this hearing already that Anderson was telling the truth in his recantation that Randall had asked the insurance companies to conduct a good background report on him to be filed with the prison authorities. Randall admits that he asked one John Joseph Healy to conduct such a report and that he did receive the report before the Thompson trial but that he 1) did not know that Healy worked for any insurance company insuring the life of Carol, although he did know Healy to be an insurance

investigator; 2) that although he thought he had a copy of the report still in his files he advised the court later in chambers that he doesn't have it. He alleged that he mailed or gave it to the attorney for Anderson who was appointed for him following his sudden removal from the prison in Stillwater. That attorney and Randall were brought before the judge in chambers and when asked to disclose the report to the court in camera, they both refused to do so. The previous request of appellant to have access to this report was refused upon a claim of privilege and work product of this attorney by Judge Amdahl—even though it was prepared by the companies in the possession of the county attorney at the time of Thompson's trial, not disclosed to either the trial court or the defense attorneys, and even though Anderson has waived attorney-client privilege as to all attorneys prior to this one and such waiver is in evidence before Judge Amdahl.

THIS COURT IS REMINDED THAT IN MINNESOTA IN 1963 THERE WAS NO PRE-TRIAL DISCOVERY RIGHT AVAILABLE TO A DEFENDANT IN A CRIMINAL MATTER: Yet, such a discovery right was obviously available to the insurance companies by virtue of their close working relationship with the police and county attorney, such evidence being already admitted in this present hearing before Judge Amdahl.

There is also much other evidence before Judge Amdahl which is completely new and previously unknown to exist by the appellant, but as previously stated, this hearing is still in progress.

Norman J. Mastrian, the "alleged middle man" of the State's theory of the case during appellant's original trial, was not available for testimony by either the State or the appellant, T. Eugene Thompson. Mastrian's attorneys had noti-

fied counsel and the trial court of this fact in writing prior to trial. Mastrian did not testify during his own trial in Duluth, Minnesota, which followed the appellant's trial.

For the purpose of this hearing, Norman Mastrian has given to appellant an affidavit dated March 17, 1969, and which is attached hereto, appendix pp. A143-A144. In this affidavit. Mastrian asserts, under oath, his own innocence; denies completely any plot or plan to kill Mrs. Thompson; denies completely ever meeting or knowing Dick W. C. Anderson (a fact asserted as true by Anderson also in his recantation and letter —both of which are attached hereto); and acknowledges that he met appellant for the first time in July, 1962, at a time when he engaged appellant to be his attorney (this is *after* all the insurance policies herein were in full force and effect). This is also obviously new evidence not previously available, completely exculpatory in nature to appellant.

The issues which are before Judge Amdahl are as stated in his order of February 11, 1969, to wit:

"1. (Paragraph III of petition) The community, in particular the jury pool, was envenomed by massive and sustained pretrial publicity.

2. (Paragraph V of petition) The prosecutor, the police and their agents stimulated some of the adverse publicity.

3. (Paragrah V of petition) The prosecutor offered and the Court received hearsay testimony.

4. (Paragraph VI of petition) The prosecutor used illegally obtained evidence against petitioner.

5. (Paragraph VII of petition) The prosecutor used false testimony procured by promsies by the prosecutor to witnesses then charged with crimes.

6. (Paragraph VIII of petition) The Court failed to grant a new trial based on newly discovered evidence—the recantation by W. C. Anderson.

7. (Paragraph IX of petition) The attorneys for the petitioner failed to adequately and competently represent petitioner.

8. (Paragraph X of supplementary petition) The prosecutor failed to disclose to petitioner or petitioner's counsel exculpatory evidence which would have tended to establish the petitioner's innocence.

9. (Paragraph XI of supplementary petition) The prosecutor, the police and their agents invaded petitioner's privacy by way of telephone taps, interception of personal and confidential communications and other non-specified methods.

The following are additional allegations put into the record by petitioner (see transcript of February 10, 1969 made in chambers prior to open court arguments herein):

10. The petitioner was denied the right to a preliminary hearing although he had requested such.

11. The violation of statute by the Grand Jury indicting petitioner and the unconstitutional make-up of said Grand Jury.

12. The trial court did not sua sponte raise the issue of whether a mistrial should have been ordered at the time of President Kennedy's death during the trial.

13. That natural justice, granted by the Ninth Amendment to the United States Constitution, was not accorded petitioner.

During this hearing on appellant's petition for post-conviction relief, Benedict S. Deinard, Esq., the appellant's attorney throughout this civil proceeding, died. He died on February 14, 1969. This Court is reminded that appellant is and has been incarcerated in prison since December 6, 1963. Appellant has sought legal aid in the preparation of this appeal; but, simply stated, he cannot meet the financial demands for such assistance. With so little time remaining within which to file and docket this appeal, he can not hope to obtain such legal assistance. Being incarcerated, he does not have access to any law library which would be of aid to him in the preparation for this appeal and can not, therefore, present a more cogent argument or presentation. He asks this Court to consider these facts when judging this inept attempt to be the "fool" whom Lincoln made reference to as those lawyers who represent themselves.

CASES CITED AS CONTROLLING

1. United States v. Jackson, 36 U.S. Law Week 4277, 390 U.S. 570, 20 L.Ed. 2d 138 (Pamphlet) 88 S.Ct. 1209, April 8, 1968.

2. Hollington v. Hewthorn and Company Ltd., Law Reports (1943) King's Bench Div. 587 at page 600.

3. In re Johnston's Estate, 220 Ia. 328, 261 N.W. 908 (1935).

4. Teitelbaum Furs, Inc. v. Dominion Insurance Company, 25 Cal. Rptr. 559, 375 P. 2d 439 at 442 (1962).

4. Sheppard v. Maxwell, 384 U.S. 333, 16 L. Ed. 2d 600, 86 S. Ct. 1507 (June 6, 1966).

6. State v. Thompson, 266 Minn. 385, 123 N.W. 2d 378 Sept. 13, 1963).

7. State v. Thompson, 273 Minn. 1, 139 N.W. 2d 490 (January 7, 1966).

8. Petition for Writ of Certiorari to United States Supreme Court, denied, October 10, 1966 385 U.S. 817, 87 S. Ct. 39, 17 L. Ed. 2d 56.

9. Thompson v. Tahash, 286 F. Supp. 663 (D. Minn. 1968).

10. United States v. Carver, 260 U.S. 482, 490; 43 S. Ct. 181, 182.

11. Fay v. Noia, 372 U.S. 391, 83 S. Ct. 822, 9 L. Ed. 2d 837.

12. Townsend v. Sain, 372 U.S. 293, 83 S. Ct. 745, 9 L. Ed. 2d 770.

13. Sanders v. United States, 373 U.S. 1, 83 S. Ct. 1068, 10 L. Ed. 2d 148.

14. Bruton v. United States, (No. 705—October Term 1967) (May 20, 1968) 391 U.S. 123, 88 S. Ct. 1620, 3 CrL 3085 at p. 3087 (footnote), (May 22, 1968).

15. Poindexter v. Greenhow (1885) 114 U. S. 270, 29 Law Ed. 185.

16. Giles v. Maryland, 386 U.S. 66 at p. 100 (1966), 87 S. Ct. 902, 17 L. Ed. 2d 778.

TEXTS CITED AS CONTROLLING

1. Restatement, Judgments, Sec. 41 p. 2.

2. The Forgotten Ninth Amendment by Bennett B. Patterson (1955), The Bobbs-Merrill Company, Inc., Publishers, Indianapolis, Indiana.

3. Clinical Laboratory Methods and Diagnosis, Gradwohl, 1963, Vol. 2 (1450-53)

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The questions presented to this court are substantial and worthy of the court's plenary consideration for there is no other means whereby, or forum to whom, a citizen of a state and of these United States may seek relief from the arbitrary abuses of judicial discretion as exemplified by the Minnesota Supreme Court in their disposition of this matter.

Judge Sylvestre of The Ramsey County District Court in his order denying the motion for summary judgment brought by the respondent insurance companies against the appellant recognized the fact that there is no statute of Minnesota which abrogated the common law as set forth in Hollington vs. Hewthorn and Company Ltd., Law Reports (1943) King's Bench Div. at p. 600 which ruling expressly overruled the holding of the Crippen case (In Re Crippen, Law Reports, 1911, Prob. 108) and made it clear that England had returned to the sounder common law rule: That a criminal conviction is not admissible in a later civil action. In so ruling, Judge Sylvestre was giving effect to the acknowledgment of the similarity between the statute of Minnesota, M.S.A. 525.87 (1961), and that of other states with like statutes and to their adherence to the common law rule. In Re Johnston's Estate, 220 Ia. 328, 261 N.W. 908 at 911 (1935). By his ruling, he was also acknowledging that the Minnesota Legislature gave approval to the doctrine that one should not profit by his own wrong and in implementation of this sound moral principle provided a means whereby the issue itself could be decided through due process of law: to wit, a trial by jury as in any other matters of civil dispute and by the attendant rules applicable to such trial.

Judge Sylvestre by his order denying summary judgment against appellant gave recognition to the principle of due process, fair and equal treatment, trial by jury and natural justice between disputants as set forth in our Federal Constitution (as well as the State Constitution). He knew and understood the unfairness of any other ruling; that there was no mutuality of parties in the criminal judgment asked to be applied as controlling in this matter; that the rules of full pretrial discovery procedures available in a civil matter are not available to a defendant charged with a crime; that Minnesota in criminal matters in 1963 still operated under the archaic and unfair rules more appropriately related to trial by combat than as an aid in the orderly quest for truth. That the moral principle enunciated in the Statute, that a person should not profit from his own wrong, was just and that it should be a proper subject of dispute between contracting parties, but only within the framework and within the rules of civil procedure which are designed to more properly elicit the truth than are the rules of criminal procedure applicable in 1963 in Minnesota.

Judge Sylvestre knew that to grant summary judgment against appellant in this civil matter would defeat the legitimate attempt of the legislature to enact a moral principle; that to do so would be unlawful interference with contractual obligations existing between these parties; and most importantly, would grant unequal application of constitutional principles of fairness and natural justice between the parties since there was no mutuality of estoppel applicable to both parties, to wit: There is no Statute in Minnesota which would give equal right to summary judgment against the respondent insurance companies had the appellant been found innocent in his criminal trial. On the contrary, the insurance companies can, as they did in this instance, give aid and assistance to the already vast-

ly disproportionate powers of the State in its action against the appellant and, if they should still be unable to obtain a conviction, retain the opportunity to subject him to yet another ordeal by trial. At least, in the second attempt the appellant has the more equal right to utilize available pre-trial discovery procedures.

Judge Sylvestre knew, having personally observed the tremendous onslaught of pre-trial publicity against the appellant beginning from the moment of his wife's death and from the criminal proceedings pending attacking the judgment of conviction of appellant, that there was no finality to that judgment of conviction. He was cognizant of this Court's ruling in the Sheppard decision (Sheppard vs. Maxwell, 384 U.S. 333, 16 L. Ed. 2nd 700, 86 S. Ct. 1507, June 6, 1966) and of other issues attacking the finality of appellant's conviction which would make the application of that judgment to this motion for summary judgment based thereon unconstitutional. For example, note: Teitlebaum furs, Inc. vs. Dominion Insurance Company, 25 Cal. rptr. 559, 375 P. 2d 439 at p. 442 (1962); Restatement, Judgments, Sec. 41, p. 2; State vs. Thompson, 266 Minn. 385, 123 N.W. 2d 378 (Sept. 13, 1963); State vs. Thompson, 273 Minn. 1, 139 N.W. 2d 490 (Jan. 7, 1966); Pet. For Cert., Denied, Oct. 10, 1966, 385 U.S. 817, 87 S. Ct. 39, 17 L. Ed 2d 56.

(In February of 1964 a poll was taken and the results were published in the Mpls. Tribune, stating that 93% of the people correctly identified T. Eugene Thompson. A greater number than those who could identify the Lt. Governor of Minnesota or Senator Mondale.)

In addition, Judge Sylvestre was advised by appellant prior to his ruling denying the motion for summary judgment on April 19, 1967, that appellant has continually asserted his in-

nocence; that his conviction is based solely upon hearsay declarations of alleged co-conspirators and accomplices. (State vs. Thompson, supra, 139 N.W. 2d 490); that he was going to continue his attack upon this vicious and wrongful and unlawful conviction by applying for Petition for Writ of Habeas Corpus in Federal Court. (This appellant did so subsequent to the date of this order).

Since this was a case of first impression in interpreting the application of a criminal conviction to a motion for summary judgment in a subsequent suit for declaratory judgment under M.S.A. 525.87 (1961); and, since a person could inherit from another whom he feloniously killed prior to the enactment of the original statute herein on April 20, 1917, Laws 1917, chap. 353; and since there is no Minnesota law covering the civil action; Judge Sylvestre denied the motion of respondent insurance companies for summary judgment against the appellant saying: "There doesn't appear to be any present law in this state which would support a holding that Thompson is barred in the instant actions from contending that the facts are different than what they were adjudicated to be by his criminal conviction. To so hold would be the making of new law." R. p. 99.

The Minnesota Supreme Court having received the matter herein from Judge Sylvestre based on his certification of its being doubtful and important prior to a jury trial on the merits received briefs and heard oral arguments. During the course of this matter the Minnesota Supreme Court was fully advised of the fact that appellant had filed a Petition For Writ of Habeas corpus in the Minnesota Federal District Court and that Federal District Judge Devitt denied this petition without prejudice stating, that since Minnesota had adopted a Post-Conviction Remedies Statute after his conviction had been con-

firmed, and also since the Sheppard decision (supra) had been decided after such confirmation, that the appellant should first give the Minnesota Courts an opportunity to review their former decision affirming appellant's conviction. Thompson vs. Tahash 286 F. Supp. 663 (D. Minn.), May 7, 1968.

The Minnesota Supreme Court was also advised that pursuant to Judge Devitt's order, appellant filed a Petition for Post Conviction Remedy (Appendix pp. A66-A68) with the court which originally heard his trial, Hennepin County District Court, Minneapolis, Minnesota on September 13, 1968.

The Post Conviction Remedy Statute is contained in the Laws, 1967, Chap. 3361, M.S.A. 590.01, et seq. and provides that either the State or the Petitioner (appellant herein) may appeal to the Minnesota Supreme Court the ultimate decision by the Hennepin County District Court. The prosecutor has already published a news broadcast and report to the effect that he would appeal any order for new trial and most certainly, appellant will appeal any order denying him a new trial.

The Minnesota Supreme Court on Oct. 25, 1968, reversed the order of Judge Sylvestre and granted summary judgment against the appellant. Appendix A26-A39; 281 Minn. 547; 163 N.W. 2nd 289. In essence they held that the criminal conviction was final, in spite of the current action requiring their ultimate review; that the issue was the same even though the parties were different; that the rules of civil procedure vs criminal procedure were of no import; that the collateral estoppel was applicable under these circumstances and that the principle "that there must be an end to litigation" was of paramount importance.

Appellant filed a Petition for Rehearing within the ten days permitted by Rule 140, Rules of Civil Appellate Procedure (Ap-

pendix p. A40-A49). Notice was served upon the Attorney General for Minnesota of this petition as required by Rule 24.04 of the Minnesota Rules of Civil Procedure since the Minnesota Supreme Court's opinion effectively declared M.S.A. 525.87 unconstitutional.

In the Petition for Rehearing another Statute in Minnesota not previously cited to the court by any party was brought to their attention to wit: M.S.A. 631.471 which reads in part as follows: "A conviction for any crime does not work a forfeiture of any property, real or personal, or of any right or interest therein."

In addition, the Minnesota Supreme Court's attention was directed to the case of the United States vs. Jackson, 36 U.S. Law Week 4277 390 U.S. 570, 20 L. Ed. 2d 138 (pamphlet) 88 S. Ct. 1209 (April 8, 1968) decided subsequent to the filing of briefs and oral arguments in this case.

A Supplemental Petition For Rehearing was filed with the court directing their attention to their decision in Chapman vs. Minnesota (File No. 41285, Docket No. 203, filed November 1, 1968) —— Minn. ——, 162 N.W. 2d 698). This case illustrated one of the arguments made in appellant's original Petition for Rehearing citing the Jackson case as authority. (App. pp. A40-A49).

The last request made of the Minnesota Supreme Court in appellant's petition for rehearing was that if it were to deny a full hearing on the issues raised in the petition, that it state in its order of denial that it had fully considered the Federal issues raised but had denied the same.

The Minnesota Supreme Court issued its order denying the petition for rehearing on Jan. 14, 1968, (App. pp. A53-A54) without granting this last request of appellant.

The issues in the criminal matter presently before the court in Hennepin County District Court are listed herein (supra). A recent decision by this court has been brought to the attention of Judge Amdahl for his consideration on one of these issues; to wit: Hearsay Evidence. Bruton vs. United States, (No. 705 October term 1967) decided May 20, 1968, 391 U.S. 123, 88 S. Ct. 1620, noted in 3 Cr L 3085, May 22, 1968. Norman Mastrian, the alleged middle-man in the State's version of murder for hire at appellant's trial, was not available for testimony, and the Court's attention is directed to the fact that an examination of appellant's record clearly establishes that without Anderson's statement to the effect that Mastrian said the appellant wanted this done, the jury would never have been able to even decide the matter, for a directed verdict would have been mandatory. This is the only reference to the appellant throughout the entire record and, of course, objected to at the time. It was allowed as an exception to hearsay. See State vs. Thompson, supra, 139 N.W. 2d 490.

This hearing in Minneapolis is still continuing, the current interuption due to the fact that Judge Amdahl found a newspaper reporter, Donald Giese, in contempt for refusing to disclose his sources of information in the police and prosecutors office, even though his articles purport to be quoting named officials in many instances. The issue was certified to the Supreme Court and further hearings await the result of this appeal.

At the time of his wife's death, appellant was the chairman of the Criminal Law Section of the Minnesota Bar as well as a member of its Board of Governors among other offices he held in the association. In 1963, in Minnesota, he can and does attest to the fact that the procedures applicable to the trial of criminal matters was a "sporting event" as opposed to a

"quest for truth", as referred to by Justice Brennan, in an article entitled, "The Criminal Prosecution: Sporting Event or Quest For Truth", Wash. U.L.R. (1963) who, at p. 287, condemned the evil of shackling counsel "so that he cannot effectively seek out the Truth and afford the accused the representation which is not his privilege but his absolute right." The issue of competent counsel is one of those listed before Judge Amdahl based, among other reasons, upon the fact that appellant agreed to be just a client and not interfere with the handling of his case; that funds up to $100,000 were made available to his counsel for retaining competent professional investigators and that not one cent of those funds was spent for such an investigation—a fact not known to appellant until after his conviction.

In Giles vs. Maryland, 386 U.S. 66, 87 S. Ct. 902, 17 L. Ed 2d 778, (1966), Justice Fortas at p. 100 states:

> "A criminal trial is not a game to outwit and entrap its quarry. The State's pursuit is justice, not a victim. If it has in its exclusive possession specific, concrete evidence which is not merely cumulative or embellishing and which may exonerate the defendant or be of material importance to the defense—regardless of whether it relates to testimony which the state has caused to be given at trial—the State is obligated to bring it to the attention of the Court and the defense."

So far in this hearing in Minneapolis the appellant has proven the existence of a blood report which clearly establishes the presence of a third person in appellant's home at the time his wife was killed. A report the prosecutor, who has been made a witness by appellant, has testified he regarded as unimportant and did not disclose it to the court or the defense. And

this fact of another person being present has been buttressed by other newly discovered evidence indicating that the third person was one of the four corroborating witnesses to the hearsay declarations Mastrian allegedly made where appellant's name wasn't even mentioned, since his name was only brought into significance by Anderson when Anderson was allegedly alone with Mastrian on one occasion. This particular witness has been in three mental hospitals for the criminally insane and was released by the prosecution, as were the others, as soon as appellant's and Mastrian's trials were completed.

Can this court in good conscience state that this criminal matter is final? Yet it is upon this conviction and theory that the Minnesota Supreme Court based its decision and applied the equally preposterous theory of collateral estoppel.

A primary jurisdictional basis for this court lies in the Ninth Amendment, or as Mr. Bennett B. Patterson of the Texas Bar entitled his treatise on the subject, "The Forgotten Ninth Amendment", (1955). At p. 57, he states: "The Ninth Amendment in the Constitution is the counterpart of the 'general welfare' clause. It protects the individual in the same manner that the general welfare clause protects the public."

At p. 58 "The entire context of the Ninth Amendment, and its historic background, definitely prove that it was intended solely as a protection of our unenumerated personal rights as individuals as distinguished from our public or collective rights. This concept is necessary to maintain an even balance in the Constitution.

At p. 60 "The trend is now towards expediency, and our executive, administrative bodies, legislatures and even our courts have been able to rationalize and justify almost any measure which the general public demands, under the theory that it is for the general welfare and common good. This has

large measure been to the disparagement of private rights
d individuals genius." See also Poindexter vs. Greenhow
885), 114 U.S. 270, 29 L. Ed. 185.

A fundamental concept of justice throughout the recorded
story of civilized societies is that each man has a right to
judged by his fellow men, in accordance with reasonable
inciples of fairness which are predominant and have existed
nd do exist in every civilized society.

These principles have been expressed and recorded at every
age of man's recorded history. They were aptly summarized
nd stated by Cicero when he said, "There is in fact a True
aw, namely right reason. It is in accordance with nature, ap-
ies to all men, is unchanging and universal."

Prior to and ever since Pilate posed the Biblical question:
hat is Truth? the people have applied this natural law in
eir quest for an answer.

This quest continues through the application of the natural
w, namely right reason, and is embraced within our constitu-
on through the addition of the Ninth Amendment. It needn't
e forgotten. It does apply to the individual and is given life
nd meaning beyond that of Due Process by a Natural Concept
f Justice. Every citizen has the right to know that this Court
ill not permit the "Quest for Truth" to be sacrificed upon
ne "Altar of Expediency."

Respectfully submitted,

T. EUGENE THOMPSON
Appellant Pro Se
Box 55 21893
Stillwater, Minnesota 55082

IN THE

Supreme Court of the United States

_____ TERM

No. _____

Travelers Insurance Company, Continental Casualty Company, Time Insurance Company, Edward Ernest Nelson, an Underwriter at Lloyd's of London, and Zurich Insurance Company,

Respondents,

40903-4-5 and 40907-8

vs.

T. Eugene Thompson,

Appellant,

Otto Swoboda, Spec. Admr. of Estate of Carol S. Thompson, deceased, et al,

Respondent,

Otto Swoboda, Spec. Admr. of Estate of Carol S. Thompson, deceased, et al,

Respondent,

and

T. Eugene Thompson,

Appellant,

40906

vs.

General Accident Fire & Life Assurance Corporation, Ltd.,

Respondent.

Additional Special Respondent: Douglas Head, Attorney General, State of Minnesota,

Respondent.

Notice of Appeal by T. Eugene Thompson, Appellant, and Request for Certification of Entire Record, and Request for Transmission of Certified Record to the United States Supreme Court by T. Eugene Thompson, Appellant.

To: Douglas Head, Attorney General for the State of Minnesota; Richard E. Kyle and Samuel L. Hanson, Of Counsel: Briggs and Morgan, and Michael J. Baglio, Attorneys for Travelers Insurance Company, Respondent; James H. Geraghty, Of Counsel: Altman, Geraghty, Leonard and Mulally, Attorneys for Continental Casualty Company, Time Insurance Company, and General Accident Fire & Life Assurance Corporation, Ltd., Respondents; O. C. Adamson II and A. W. Nelson, of/and Meagher, Geer, Markham & Anderson, Attorneys for Edward Ernest Nelson, an Underwriter at Lloyd's of London, Respondent; Peter F. Walstad for Mordaunt, Walstad, Cousineau & McGuire, Attorneys for Zurich Insurance Company, Respondent; Joe A. Walters and William C. Kelly, of/and O'Connor, Green, Thomas, Walters & Kelly, Attorneys for Otto Swoboda, as Special Administrator of the Estate of Carol S. Thompson, deceased, and as Special Guardian of Jeffrey D. Thompson, Patricia A. Thompson, Margaret A. Thompson, and Annette L. Thompson, minors, Respondent; and Mae Sherman, Clerk of the Minnesota Supreme Court.

PLEASE TAKE NOTICE that the above named appellant, T. Eugene Thompson, appeals to the United States Supreme Court from the judgment of the Minnesota Supreme Court's order filed October 25, 1968, granting summary judgment against appellant by the respondent insurance companies; and from the Court's order of January 14, 1969, summarily denying appellant's Petition For Rehearing and Supplemental Petition For Rehearing; and from the whole thereof.

The jurisdiction for this appeal to the United States Supreme Court is invoked pursuant to Title 28, Sec. 1257 (2).

PLEASE TAKE FURTHER NOTICE that appellant does hereby request Mae Sherman, Clerk of the Minnesota Supreme Court, to certify the entire record; and does further request that provision be made to transmit the certified record herein to the United States Supreme Court.

Dated this 11th day of March, 1969, at the Minnesota State Prison.

T. EUGENE THOMPSON
Appellant
Box 55 21893 Pro Se
Stillwater, Minn. 55082

ORDER DENYING MOTION FOR SUMMARY JUDGMENTS

A hearing was held on April 18, 1967 in Court Room No. 820 of the Ramsey County Court House in the City of St. Paul, Minnesota on the motion in the above-entitled actions, (the issues in which are to be jointly heard and tried), made by the defendant in the two actions in File No. 348412 and by the plaintiff in each of the actions in the other numbered files

> "for an order granting summary judgment in favor of each of the moving parties and against T. Eugene Thompson (defendant in all cases except case No. 348412 and plaintiff in said case) upon the ground that as between T. Eugene Thompson and the moving parties herein there is no genuine issue as to any material fact, and that the moving parties, respectively, are entitled to judgment in each of said cases as a matter of law adjudging and determining that T. Eugene Thompson has no in-

terest in any of the proceeds of any of the insurance policies which are the subject matter of said actions."

The motion was heard by the court and the undersigned appointed and assigned to serve as and discharge the duties of a judge of the court pursuant to Section 484.61 M.S. and to whom the said actions were assigned for hearings and trial. A written notice of said motion was filed with the clerk of this court on February 14, 1967.

There appeared at the hearing:

Messrs. Richard E. Kyle and Samuel L. Hanson, of the firm of Briggs & Morgan of St. Paul, Minnesota, and Mr. Michael J. Baglio, of the firm of Baglio & Buckley of St. Paul, Minnesota, representing the movant The Travelers Insurance Company in support of the motion.

Mr. J. H. Geraghty of the firm of Altman, Geraghty, Leonard & Mulally of St. Paul, Minnesota, representing the movants Continental Casualty Company, Time Insurance Company and General Accident Fire & Life Assurance Corporation, Ltd. in support of the motion.

Mr. Robert Kolacke of the firm of Mordaunt, Walstad, Cousineau & McGuire of Minneapolis, Minnesota, representing the movant Zurich Insurance Company in support of the motion.

Messrs. Arthur W. Nelson and O. C. Adamson of the firm of Meagher, Geer, Markham & Anderson of Minneapolis, Minnesota, representing the movant Edward Ernest Nelson, an Underwriter at Lloyd's London, in support of the motion.

Mr. Allen I. Saeks, associated with Mr. Benedict S. Deinard of Minneapolis, Minnesota, representing T. Eugene Thompson in opposition to the granting of the motion.

Messrs. Joe A. Walters and William C. Kelly of the firm of O'Connor, Green, Thomas, Walters & Kelly of Minneapolis,

Minnesota, representing Otto Swoboda, as Special Administrator of the Estate of Carol S. Thompson, deceased, Jeffrey D. Thompson, a minor, Patricia A. Thompson, a minor, Margaret A. Thompson, a minor, Annette L. Thompson, a minor, and Otto Swoboda as Special Guardian of said minors.

The court has considered all the files, records and proceedings herein, the affidavits submitted in support of the motion, the briefs and arguments of counsel and the authorities cited by counsel.

IT IS ORDERED: That the said motion for a summary judgment against T. Eugene Thompson and in favor of the movant in each of the above-entitled actions be and the same is denied.

IT IS CERTIFIED: That the question presented by the said motion for decision is important and doubtful. The question so presented is stated in the memorandum attached hereto. The memorandum is hereby made a part of this order and certificate.

Dated this 19th day of April, 1967.

By the Court:
J. H. SYLVESTRE
Retired District Judge
Serving Pursuant to
Section 484.61, M.S.

MEMORANDUM

The insurance company party in each of the above-entitled actions contends: That implicit in the judgment of conviction whereby Tilmer Eugene Thompson was heretofore adjudged guilty of the crime of murder of the first degree is a determination of the issue of fact that, without excuse or justification and with a premeditated design to effect her death, Thompson caused the death of his wife, Carol; that

this determination is conclusive upon Thompson in the pending civil action wherein he, as the beneficiary, seeks to recover on a policy of insurance payable upon the death of Carol and precludes him from denying that he feloniously and intentionally caused Carol's life to be taken; that because of this determination, Section 525.87 of the statutes prevents Thompson from recovering the proceeds of the policy; that the insurance company is entitled to a judgment as a matter of law against Thompson adjudging that he has no interest in the proceeds of the policy; and that, therefore, the motion of the insurance company for a summary judgment must be granted.

T. Eugene Thompson, either the plaintiff or a defendant in each of the actions, denies that he caused Carol's life to be taken, and denies that the judgment of conviction is conclusive against him, or even competent evidence, in the pending civil action; and contends that the motion of the insurance company for a summary judgment in each of the actions must, therefore, be denied.

Thus, there is presented for decision this major question:

Question Presented

> When a defendant in a criminal action has actually litigated the issue of fact whether he feloniously and intentionally caused the life of a person to be taken, which issue was essential to and was determined by a judgment convicting him of murder, is the determination conclusive against him in a subsequent civil action wherein he seeks to recover as the beneficiary on a policy of insurance payable upon the life of the person killed?

The insurance companies assert and argue that the determination in the judgment of conviction is conclusive against

Thompson in the civil actions now before the court because of the application of the doctrine of collateral estoppel sometimes called estoppel by verdict. The doctrine of collateral estoppel, if I correctly understand our subsisting decision law, may be generally stated to be as follows: Where a party actually litigated an issue of fact which was essential to and was determined by a valid and final judgment in a prior civil action, the determination may be invoked as being conclusive against him when he is a party to a subsequent civil action based on a different cause of action. This general statement is subject to possible exceptions[1] but I do not understand that they have any bearing on the question presented for decision.

It is well established that the judgment and extrinsic evidence consistent with and not impugning the validity of the record may be considered in ascertaining whether or not an issue of fact was actually litigated, was essential to, and was determined by the judgment in the prior action. *Augir v. Ryan* (1896), 63 Minn. 373, 65 N.W. 640; *Neilson v. Pennsylvania Coal & Oil Co., et al.* (1899), 78 Minn. 113, 80 N.W. 859; *Anderson v. Butterick Publishing Co.* (1916), 132 Minn. 30, 155 N.W. 1045; *Bernstein v. Levitz* (1946), 223 Minn. 46, 25 N.W. 2d 289; *Restatement of Judgments*, Section 68, *Comment k;* 50 *C.J.S., Judgments*, Section 843; *Am. Jur., Judgments*, Sections 467 and 468.

It would appear that in Minnesota what is called "mutuality of estoppel" is no longer a prerequisite to the application of the doctrine of collateral estoppel. The doctrine may

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[1] For examples of possible exceptions see: *Gollner v. Cram* (1960), 258 Minn. 8, 102 N.W. 2d 521; *State ex rel. City of St. Paul v. Great Northern Ry. Co.* (1916), 134 Minn. 249, 158 N.W. 972; *Restatement of Judgments*, Sections 69, 71 and 72.

be invoked with respect to an issue of fact in a pending civil action by one party against another party who was also a party in a prior civil action in which the issue of fact was litigated and adjudicated, and the party so invoking the doctrine need not have been a party in the prior action. *Lustik v. Rankila* (1964), 269 Minn. 515, 131 N.W. 2d 741; *State of Michigan v. Morton Salt Co.* (Dist. Ct. Minn.), 259 F. Supp. 35 (1966).

The doctrine of collateral estoppel requires that the adjudication in the prior action must be by what is termed a "final judgment" if it is to have any effect in a subsequent action. *Brooks Realty, Inc. v. Aetna Insurance Co.* (1964), 268 Minn. 122, 128 N.W. 2d 151; *In re Estate of Hallbom* (1933), 189 Minn. 383, 249 N.W. 417; *Hutton v. Boucher* (1923), 157 Minn. 40, 195 N.W. 495; *State v. Brooks-Scanlon Lumber Co.* (1917), 137 Minn. 71, 162 N.W. 1054; *Dunnell's Digest* (3rd ed.), Section 5164; *Restatement of Judgments,* Section 41; *Am. Jur., Judgments,* Section 340; 50 *C.J.S., Judgments,* Section 699. But this does not mean that the judgment must be unalterable without any possibility of it ever being set aside or reversed. *Restatement of Judgments,* Section 41, *Comment d.* The adjudication is deemed to be a final judgment for the application of the doctrine when, in order to give it effect, no further judicial action or proceedings are contemplated by the court making the adjudication. *Brooks Realty, Inc. v. Aetna Insurance Co.* (1964), supra; *In re Trust Created by Will of Enger* (1948), 225 Minn. 239, 30 N.W. 2d 694; *Miller v. Simons, et al.* (1953), 239 Minn. 523, 59 N.W. 2d 837. It has been said that ordinarily the requirement of finality as a basis for appellate proceedings is the same as that of finality as a basis for the application of the doctrine of collateral estoppel. *Restatement of judg-*

ments, Section 41, *comment a*. In Minnesota the fact that an appeal from the judgment is pending and that it may be reversed does not deprive it of its conclusive effect in another action; it retains the conclusive effect so long as it is not reversed. *Spratt v. Spratt* (1921), 150 Minn. 5, 184 N.W. 31; *Wilcox Truck, Inc. v. Rosenberger* (1926), 169 Minn. 39, 209 N.W. 308; *Bolsta v. Bremer* (1942), 212 Minn. 269, 3 N.W. 2d 430; *Simonds v. Norwick Union Indemnity Co.* (1934, C.A. 8th), 73 F. 2d 412; *Dunnell's Digest* (3rd ed.), Section 5201; *Annotation*, 9 *A.L.R.* 2d 984 at 1001.

The doctrine of collateral estoppel is stated above as applying only to cases where the prior judgment was entered in a civil action because our Supreme Court has not, so far, determined that it was operative with respect to a prior adjudication in a criminal action.

* * * * *

In jurisdictions outside of Minnesota the great preponderance of the cases hold that a conviction is not conclusive in a subsequent civil action against the person convicted, that the conviction is not even competent evidence in such an action as tending to prove facts upon which it is based. See *Annotations*, 31 *A.L.R.* 261 and 18 *A.L.R.* 2d 1287. This great preponderance exists as appears from the annotations, when we consider all types of civil actions in which a prior judgment of conviction was offered as evidence and all types of convictions including those for traffic violations and other minor offenses as well as those for felonies. However, the modern tendency seems to be to abandon any general rule for all types of cases, to distinguish between the types, and to

formulate different rules for different classes of cases.[2] When we limit our inquiry to the restricted category of the cases, where a party seeks to recover because of the occurrence of an event he was convicted of having feloniously caused, it would appear questionable that the preponderance of the decisions is in favor of a rule excluding the conviction from admission as evidence. Of the decisions in this category permitting reception in evidence of the record of conviction, it does not appear there is a substantial preponderance one way or another as between those which hold the conviction conclusive, and those which hold the conviction to be not conclusive.

In that restricted category of cases, the following are examples of holdings to the effect that the prior conviction is not competent evidence as tending to prove facts upon which it was based: *Gerard v. Vermont Mut. Fire Ins. Co.* (1931), 103 Vt. 330, 154 A. 666. (In this action by an insured to recover on a policy of fire insurance it was held that the record of the conviction of the insured of arson for burning the building covered was inadmissible.) *Lillie v. Modern Woodmen of America* (1911), 89 Neb. 1, 130 N.W. 1004. (This was an action by the beneficiary to recover on a benefit certificate issued upon the life of her husband whom she had been convicted of murdering and it was held that the record of her conviction was inadmissible as evidence.) *In re Johnson's Estate* (1935), 220 Iowa 328 and 337, 261 N.W. 909, 262 N.W. 488. (In proceedings by a widow for a statutory allowance from the estate of her husband whose death she had caused, it was said that the record of her conviction of manslaughter

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[2] *Connecticut Fire Ins. Co. v. Ferrara* (1960), C.A. 8th Mo., 277 F. 2d 388 at 390; *Mineo v. Eureka Security Fire & Marine Ins. Co.* (1956), 182 Pa. Super. 75, 125 A. 2d 612 at 616; *Annotation*, 18 *A.L.R.* 2d 1287 at 1289.

was not conclusive, and not even admissible as evidence.) *Smith v. Dean* (1956), 226 Ark. 438, 290 S.W. 2d 439. (In this case a widow petitioned the Probate Court in the estate of her deceased husband whom she had been convicted of murdering, for a widow's statutory allowance and it was held that the judgment of conviction was not admissible.) *Metropolitan Life Ins. Co. v. Stand* (1920), 25 Ga. App. 90, 102 S.E. 647. (In this case the beneficiary sued to recover on a policy of insurance payable upon the death of his wife whom he had been convicted of feloniously killing, the verdict returned being voluntary manslaughter. It was held that the judgment of conviction was not admissible in evidence and that he was not precluded from testifying that the killing was accidental.) *Schreiner v. High Court I.C.D.F.* (1890), 35 Ill. App. 576. (In this action the beneficiary sought to recover on a certificate payable to her upon the death of her husband, she having been convicted of murdering him. It was held that the conviction was not a bar to her action and was not even evidence that she killed her husband.)

In the category above mentioned the following are examples of decisions holding that a judgment of conviction is admissible as evidence tending to prove the facts upon which it was based but was not conclusive upon the person convicted: *Schindler v. Royal Ins. Co.* (1932), 358 N.Y. 310, 179 N.E. 711, 80 A.L.R. 1142. (This is a leading case in which the plaintiff sought to recover on a policy of fire insurance containing a provision that the policy would be void in case of any fraud of the insured touching the subject of insurance. The plaintiff had been convicted of the crime of presenting a fraudulent proof of loss. It was held that the conviction was admissible in evidence "as presumptive proof of the commission of the crime" but that it was "not effective as a plea in bar.")

Sovereign Camp W. O. W. v. Gunn, (1932), 224 Ala. 444, 140 So. 410; (1933) 227 Ala. 400, 150 So. 491; (1934) 229 Ala. 508, 158 So. 192. (These three appeals involved an action by an assignee of the beneficiary on a policy of insurance payable upon the death of the insured who was the father of the assignee and the husband of the beneficiary, the beneficiary having been convicted of murdering the insured. In the first appeal it was held that defendant insurer was not entitled to an instruction based on the assumption that the judgment of conviction was "res adjudicata and conclusive." In the second appeal it was held that the record of conviction was admissible in evidence, not only for impeachment purposes but as a "solemn judicial finding * * * clothed with a prima facie presumption of verity" upon the introduction of which the "burden of proof" shifted to the plaintiff and that to overcome such prima facie showing the evidence was not limited to an attack on the judgment of conviction on grounds of fraud or perjury but other evidence was admissible tending to prove the innocence of the beneficiary. In the third appeal a new trial was again granted because the verdict for plaintiff was contrary to "the great preponderance of the evidence" in view of the prima facie evidence of the judgment of conviction and the discredited and unreasonable story of the beneficiary.) *Fidelity-Phoenix Fire Co. v. Murphy* (1933), 226 Ala. 226, 146 So. 387; (1936) 231 Ala. 680, 166 So. 604. (These two appeals involved an action by an insured to recover on a policy of insurance because of loss resulting from the sinking of a steamboat, the insured having been convicted of the crime of conspiracy to defraud the insurance carrier by the wilful and corrupt destruction of the ship. It was held in the first appeal that the conviction was admissible "as a circumstance tending to show the commission of the crime." In the second appeal

it was held that the conviction was "admissible as evidence in the civil case * * * not conclusive but prima facie evidence of the facts.")

North River Ins. Co. v. Militello (1937), 100 Colo. 343, 67 P. 2d 623; (1939) 104 Colo. 28, 88 P. 2d 567. (This was an action by an insured on a policy of insurance to recover for the loss resulting from the destruction of an apartment building by an explosion and fire, the insured having been convicted of burning the property with intent to defraud the insurer. On the first appeal it was held that the conviction was not conclusive evidence but was admissible "and when so admitted carried proof of the conviction to be considered as prima facie evidence of the fact that plaintiff destroyed * * * the property. It was such presumptive proof as to shift the burden to him to establish his innocence thereof." After a retrial the jury again returned a verdict for the plaintiff and on the second appeal there was an adherence to the holding in the first appeal as being the law of the case. There was, however, an expression in an opinion, dissenting in part, favoring a rule which would make the conviction conclusive.) *Wolff, et al. v. Employers Fire Ins. Co.* (1940), 282 Ky. 824, 140 S.W. 2d 640, 130 A.L.R. 682. (In this case the plaintiffs sued to recover on a policy of fire insurance covering the contents of a building they occupied. Before the trial of the civil action they were convicted of wilfully and intentionally burning the insured property. It was held that the judgment of conviction did not bar them from maintaining the civil action but would be admissible in evidence in the retrial of the case "as a relevant circumstance to be considered by the jury in determining whether or not plaintiffs wilfully destroyed the insured property.")

Connecticut Fire Ins. Co., et al., v. Ferrara (1960 C.A. 8th Mo.), 277 F. 2d 388, is a case in the category above mentioned. It held that a previous judgment of conviction was admissible in evidence but the opinion said that the court was not deciding one way or another whether the adjudication was conclusive upon the convicted person. The case involved the liability of two insurers, the appellants, on policies, for loss resulting from the destruction of a grocery market by fire, the insured, appellee, having been convicted in the state court of arson for causing the fire. At the trial before the U. S. District Court Western District of Missouri, evidence of the conviction was not admitted on the grounds that the conviction had been appealed and judgment was entered for the insured. An appeal was taken from this judgment to the Court of Appeals and thereafter the Supreme Court of Missouri affirmed the conviction. Appellants then moved for vacation of the judgment in the trial court but the motion was denied. The Court of Appeals reversed the judgment with directions to dismiss the suit. It held the conviction could be considered but said it was unnecessary to decide whether the adjudication was binding on the appellee. Dismissal was directed because, considering the opinion of the Missouri Supreme Court and the record, it appeared conclusive that appellee had caused the fire.

The following are examples of decisions in the category above mentioned holding that a judgment of conviction is admissible in evidence and conclusive with respect to the issues thereby adjudicated as against the person convicted: *Eagle, Star & British Dominions Ins. Co. v. Steller* (1927), 149 Va. 82, 140 S.E. 314, 57 A.L.R. 490, Noted 12 Minn. L. Rev. 546. (In this pioneering and much discussed case an insured recovered in the trial court against the insurer on a

fire insurance policy for loss resulting from the burning of a stock of merchandise, the court refusing to admit in evidence a previous judgment convicting the insured of the crime of wilfully burning the covered property with the intent of defrauding the insurer. On appeal it was held that the trial court had erred in refusing to admit evidence of the conviction, that "the precise finding of fact that the accused was criminally responsible for the fire, unquestionably incendiary, which destroyed his goods" was conclusive upon the insured. There was a reversal of the trial court judgment for the plaintiff and direction for the entry of judgment for the defendant.) *Austin v. United States, et al.* (C.A. 7th Ill.), 125 F. 2d 816 (1942). (In this action a beneficiary sought to recover on a policy of war risk insurance. The District Court, Eastern District of Illinois, granted summary judgment against the beneficiary holding that the fact that she had murdered the insured was established by the record of the criminal proceedings showing her conviction and that she was estopped from receiving the insurance. On appeal it was said that no error had been committed in holding the judgment of conviction conclusive upon the plaintiff and the summary judgment was affirmed.) In *Re Greifer's Estate* (1939), 333 Pa. 278, 5 A. 2d 118. (In this case a wife who had been convicted of murder of the first degree in killing her husband sought to recover as a beneficiary under a trust covering policies of insurance which the husband had set up for the benefit of the wife and others. It was held she could not recover on the common law principle that a person will not be permitted to profit by his own crime.) *Mineo v. Eureka Security Fire & Marine Ins. Co.* (1956), 182 Pa. Super. 75, 125 A. 2d 612. (This case involved an action brought by a creditor assignee of insureds to recover on policies for prop-

erty loss resulting from a fire, the assignment to the plaintiff having been made after the fire, and the insureds having been convicted of criminally setting the fire. At the trial the record of conviction was admitted into evidence. The jury returned a verdict against the insurance companies, defendants. On appeal it was held that there had been no error in admitting the record of conviction into evidence, that judgment notwithstanding the verdict should be granted because the conviction of the insureds was a bar to recovery for reasons of public policy, the court saying: "We are of the opinion that when one is convicted of a felony and subsequently attempts to benefit from the commission, the record of his guilt should be a bar to his recovery.") In *Re Kravitz' Estate* (1965), 418 Pa. 319, 211 A. 2d 443. (In this case a wife convicted of murder of the second degree in killing her husband asserted a claim, as a legatee and devisee to the residuary estate of the husband, in The Orphans' Court but the court refused to permit the question of her guilt or innocence to be relitigated and held that the record of her conviction was conclusive notwithstanding that their so-called "Slayer's Act" merely provided that a record of conviction was admissible in evidence. Reviewing the action of The Orphans'. Court the Supreme Court of Pennsylvania ruled "That the record of conviction and judgment of sentence of (the wife) for the murder of her husband is not merely prima facie evidence thereof, but is a conclusive bar to her right to take under or against her husband's will and that neither the question of "murder" nor her guilt or innocence of the crime can be relitigated.") *Teitelbaum Furs Inc., et al. v. Dominion Insurance Co.* (1962), 25 Cal. Rptr. 559, 375 P. 2d 439. (This was a case where insured corporations brought an action to re-

cover for the alleged theft of furs on policies issued by defendant corporations, the president of the corporations having been convicted of conspiracy to commit grand theft, attempted grand theft and the filing of a false and fraudulent insurance claim, and the insured conceding that the claim was for the same loss involved in the criminal conviction, and that they were mere *alter egos* of their president. In the trial court the jury returned a verdict for the plaintiffs, and the defendants' motion for a new trial was granted and their motion for judgment notwithstanding the verdict was denied. On appeal the Supreme Court of California reversed the orders on the motions, and directed the entry of judgments for defendants. it was squarely held that the judgment of conviction was conclusive against the claimants in the subsequent civil action because the doctrine of collateral estoppel applied since the judgment met the test for the applicability of the doctrine formulated in *Bernhard v. Bank of America Nat. Trust & Savings Ass'n* (1942), 19 Cal. 2d 807, 122 P. 2d 892, a test later quoted in *Lustik*, supra.

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While the motions for summary judgment do not require an immediate answer to the question whether a judgment of conviction may be admissible in a subsequent civil action as tending to prove the facts upon which it was based, when it is not conclusive upon a party, that question and the question whether the judgment may be conclusive if admissible, are so interrelated that a discussion of one naturally involves the other. Furthermore, a full consideration of the question presented by the motions requires that we envision what consequences may follow from the answer made to that question and what consequential other questions may arise to be answered hereafter.

If it be the substantive law that an adjudication in a criminal action is conclusive against the person convicted when he seeks a remedy as a party to a subsequent civil action, then the record of conviction would be admissible as direct evidence of such adjudication, and of what questions of fact were litigated and determined. The hearsay exclusionary rule and its exceptions would not then be involved. But if the previous judgment of conviction is not conclusive upon that party is it admissible against him for the purpose of evidencing the facts upon which it was based? Is it so admissible as to any other adverse party in the later action? What rules of evidence would permit the admission or require the exclusion of the record of conviction when offered for that purpose?

While the Model Code of Evidence (1942) and the Uniform Rules of Evidence (1953), since they have not been adopted in this state, are not controlling law, reference may well be made to them as containing expressions of what the rules of evidence should be, in the opinion of a number of persons learned in the subject. Rule 521 of the Model Code would make admissible "Evidence of a subsisting judgment adjudging a person guilty of a crime or a misdemeanor * * * as tending to prove the facts recited therein and every fact essential to sustain the judgment." Rule 63 (20) of the Uniform Rules, as an exception to the hearsay exclusionary rule, would make admissible "Evidence of a final judgment adjudging a person guilty of a felony to prove any fact essential to sustain the judgment." In the comment following each of these proposed rules it is stated that analytically a judgment of conviction is hearsay and is for that reason rejected by the majority of courts when offered to prove the defendant's guilt in another action. In the comment of the Model Code it is

stated that a "growing number" of states admit the judgment when offered against the defendant to prove his guilt in an action in which this is a material matter. In the comment of the Uniform Rules it is explained that convictions in traffic and misdemeanor cases often do not have about them the "tags of trustworthiness" and for that reason its rule of admissibility would be restricted to convictions for felonies.

Professor Wigmore argued for the admission in evidence in a present cause under the so-called "official statements" exception to the hearsay rule, of a judgment in a prior cause when the issue there investigated was substantially the same as in the present cause. Wigmore on Evidence (3rd ed. 1940), Sections 1346a and 1671a. Professor McCormick stated in his 1954 handbook that the probable trend of evolution would be "toward the admission generally against a present party of any judgment or finding in a former civil or criminal case if the party had an opportunity to defend," and he added, "the principles on which is founded the hearsay exception for official written statements would justify this extension." McCormick, Evidence (1954). Section 295, at page 619.

It appears to be contemplated under the proposed rules above mentioned of the Model Code and the Uniform Rules and in the sections above cited of Wigmore's treatise that when a judgment of conviction is so admissible it may be admitted against any adversary party even though the person convicted is not a party to the subsequent action. This would seem to be logical if admissibility is grounded upon the official statements exception to the hearsay rule. Quite properly the proposed codes and treatises above mentioned, dealing with only procedural rules of evidence, are noncommittal with regard to the question of substantive law whether the previous judgment of a conviction, when admitted, is conclusive against the convicted party.

If a previous judgment of conviction is admissible as tending to prove the facts upon which it is predicated, and if it is not conclusive, then what probative effect does it have? We find in the language of some decisions above cited, holding that a judgment is so admissible, a variety of expressions intended to characterize the probative effect of the judgment. It is evident that the use of such adjectives as "prima facie" and "presumptive" in explaining the probative effect is not conducive to clarity because of the variances in the meaning intended and of the confusion resulting when the word "presumption" is used. Depending on what court uses the word it may or may not denote a shifting of the burden of persuasion.

When a previous judgment of conviction is so admitted is it merely another item of evidence to be weighed by the jury as it please? Or does it establish a "Thayerian" or some other type of presumption? Or does it produce the effect, by whatever name called, of shifting the burden of persuasion to a party contending the facts to be contrary to those implicitly found by the judgment? In other words, does the judgment have the effect contemplated in clause (a) of Rule 14 of the Uniform Rules which, as I understand it, reflected the view of Professor Edmund M. Morgan with respect to a class of presumptions? Specifically, assuming that the issues are similar to those in the instant case, that the judgment is admissible in evidence and that the jury is required to return a special verdict, would a question submitted to the jury be substantially in this form: "Has the evidence in this case induced you to believe it is more probable than not that——————intentionally caused the life of——————to be taken?" Or should the question be submitted in substantially the following form: "Has the evidence in this case in-

duced you to believe it is more probable than not that———
———did not intentionally cause the life of———
———to be taken?"

Note should be taken of another rule, not involved in the instant case, under which a record of conviction upon a plea of guilty may be admitted as tending to prove facts upon which the judgment was based. This evidence is admissible under the so-called "admissions of a party-opponent" exception to the hearsay rule and the exception is inapplicable if the convicted person is not a party to the action in which the evidence is offered. It was the inapplicability of this rule to the facts of the case which apparently induced the decision made in *True, et al. v. Citizens Fund Mut. Fire Ins. Co.* (1933). 187 Minn. 636, 246 N.W. 474. This action was brought by plaintiffs as assignees of an insured on two checks issued by the insurance company defendant in payment of claims against it upon two of its fire policies. After the fire the insured assigned all his interest in the claims to the plaintiffs, his creditors, and thereafter the defendant adjusted the fire loss and issued the two checks and plaintiffs deposited them for collection. After the adjustment and the issuance of the checks the insured pleaded guilty to the charge of arson for burning the property covered by the insurance and was sentenced. Receiving information that the insured had set the fire the defendant stopped payment on the checks and the drawee bank refused payment when the checks were presented. At the trial the record of conviction was offered as evidence but was excluded and, on defendant's appeal, the exclusion of the record was sustained. In the decision it was stated that the plaintiffs "conceded as they must" that it would have been a good defense to prove that the insured had wilfully set the fire. The case referred to what it called "two

well-considered cases relied on by appellant" viz., *Schindler*, supra, and *Heller*, supra, but these were distinguished because in the case at bar "the one who was convicted of arson (was) not a party to the suit and had parted with his interest in the subject matter of the suit before he pleaded guilty and before the judgment of conviction was entered." There was affirmance of the trial court's direction of a verdict for plaintiff and denial of defendant's motion for a new trial.

In the language of this decision there appears to me to be an implication that a prior judgment of conviction is admissible as evidence tending to prove the facts upon which it was based only if it is admitted under the "admissions of a party opponent" exception to the hearsay rule, in a later civil action to which the convicted person is a party. It may be noted, incidentally, that Wigmore criticized the decision with these words: "unsound; this sort of law is a reproach to our system." IV Wigmore on Evidence (3rd ed. 1940). Section 1346a, Note 1 at page 673. His criticism would be justified if a judgment of conviction is admissible under the "official statements" exception to the hearsay exclusionary rule, for under the logic of that exception such a judgment would be admissible as tending to prove the facts upon which it was based even when the convicted person is not a party.

In the brief submitted on behalf of Mr. Thompson reference is made to *Anderson v. Grasberg* (1956), 247 Minn. 538, 78 N.W. 2d 450, and, assuming Grasberg to have been convicted as charged, it is argued: "* * * if the rule urged by the insurance companies in their brief were to be adopted by the Court, it would be impossible for a claimant such as Alfred Grasberg to recover in a civil proceeding after having been convicted of the murder of his wife under Minnesota criminal law. The special administratrix of Grasberg's de-

ceased wife would simply have gone into the district court, presented Grasberg's conviction of murder in the first degree, moved for summary judgment, and thus prevailed. Such a result would mean that the Minnesota Supreme Court would never have reached the decision it did in *Grasberg*." My understanding of the doctrine of collateral estoppel does not lead me to that conclusion. As was pointed out in *Morton Salt Co.*, supra (529 F. Supp. at 65), the doctrine is one effecting "issue preclusion" as distinguished from "claim preclusion" resulting from the closely related doctrine of res judicata. The issue of whether Grasberg was sane or insane under the Durham test at the time he killed his wife and the questions of fact relevant to such a test would not have been litigated in the assumed trial of the criminal charge and would not have been determined by the assumed judgment of conviction. Nothing would have precluded litigation and determination of the issue in the subsequent civil case, so it seems to me.

It does not appear to me that the determination of the issues now before the court call for or depend upon an interpretation of any provision of Section 525.87 of the statutes or that there is anything in the history of the section indicating any legislative intention, one way or another, with respect to such issues. The fact that the predecessor of the section, Chapter 353 of Laws 1917, was enacted in language similar to an analogous statute of Iowa providing that the *commission* of certain crimes would work a forfeiture of rights instead of providing that *conviction* for the commission of the crime would work the forfeiture, as in the language of statutes in some other states, does not necessarily give rise to an inference indicating a legislative intent that a judgment of conviction should not be admissible in evidence or conclusive

against the criminal. An inference might be drawn of at least equal validity that our legislature merely intended that a criminal *conviction* should not be a prerequisite for the forfeiture.

The insurance companies rely heavily upon *Lustik v. Rankila*, supra, stressing the abandonment therein of the requirement of "mutuality of estoppel" and the quotation with apparent approval of the test which had been formulated in the California case of *Bernhard*, supra, for the determination of the applicability of the doctrine of collateral estoppel. Citing *Teitelbaum*, supra, I understand the thrust of their argument to be, that the judgment which convicted Thompson of murder of the first degree of his wife is one compelling affirmative answer to each of the three questions posed by the test, thereby requiring a determination that the doctrine applies, and that the judgment is, therefore, conclusive against Thompson in the instant actions. This argument ignores, so it seems to me, a fact I regard to be highly probable—that our Supreme Court quoted the test as being one suitable for the purpose of determining when the doctrine of collateral estoppel applies to adjudications in civil actions only, and it was not contemplated that use would be made of the test with respect to judgments of conviction. *Teitelbaum* was not cited in *Lustik*. Neither was any other case holding a previous judgment of conviction conclusive against the person convicted. If we would use the test to justify extension of the doctrine to a judgment of conviction our reasoning leads us to the conclusion that every such judgment meeting the test is binding upon the person convicted in any subsequent civil action. We are thus carried to an undesirable result which makes us suspect the validity of the test for use in determining the applicability of the doctrine with respect to any

judgment other than one rendered in a civil action. Regardless of the test, when we attempt to apply to adjudications in criminal actions, the doctrine which has heretofore been restricted in its application to adjudications in civil actions only, we are led to results which make us question the advisability of our attempts. I am not persuaded that making the doctrine apply to judgments of conviction is simply giving an existing principle of law its natural and logical application.

Disregarding the doctrine it is, of course, possible to do what was done in Pennsylvania, for instance—to hold because of considerations of public policy that a previous judgment of conviction is binding upon the person convicted in the restricted class of actions where he seeks to recover because of an occurrence he was convicted of having feloniously brought about. Among the public policy considerations for such a holding some may be the same as those supporting the allied doctrines of res judicata and collateral estoppel. In the three Pennsylvania cases above cited, *Griefer's Estate*, *Mineo* and *Kravitz*, there were no allusions to these doctrines.

Be that as it may, there does not appear to me to be any present law in this state which would support a holding that Thompson is barred in the instant actions from contending that the facts are different than what they were adjudicated to be by his criminal conviction. To so hold would be the making of new law. Trial courts must recognize certain inhibitions with respect to the making of new law, particularly substantive law.

In the absence of controlling judicial precedence holding a judgment of conviction to be conclusive as to the issues thereby adjudicated against the person convicted when he seeks to recover in a subsequent civil action, or of governing statutory law, I have felt constrained to deny the motion for

a summary judgment against T. Eugene Thompson and in favor of the moving party in each of the actions.

I am not hesitant to add that I consider the question presented to be doubtful as may be indicated by the foregoing discussion. The question is, of course, important.

Hence the order made and the certificate appended thereto.

SYLVESTRE, J.

No. 111 Ramsey County Murphy, J.

Travelers Insurance Company,
Continental Casualty Company,
Time Insurance Company, Edward
Ernest Nelson, an underwriter at
Lloyd's, London, and Zurich
Insurance Company,

Appellants,

40903-4-5 and 40907-8
T. Eugene Thompson,

Respondent,

vs.

Otto Swoboda, Spec. Admr. of Estate
of Carol S. Thompson, deceased, et al,

Respondents,

Otto Swoboda, Spec. Admr. of Estate
of Carol S. Thompson, deceased,
and T. Eugene Thompson,

Respondents,

40906

vs.

General Accident Fire & Life
Assurance Corporation, Ltd.,

Appellant.

ENDORSED
Filed October 25, 1968
Mae Sherman, Clerk
Minnesota Supreme Court

SYLLABUS

1. The general common-law rule that a conviction precludes neither the bringing of a civil action by a convicted person nor an attempt to prove that he is innocent of the offense is subject to the exception that where a convicted defendant attempts by subsequent civil litigation to profit from his own crime the judgment of conviction in the criminal case is conclusive as to the result of the civil action where the facts and issues in both are identical.

2. Minn. St. 525.87, which provides that one who "feloniously" takes the life of another shall not profit from his own wrong, declares and establishes the policy which prohibits a murder from profiting from the death that he has feloniously caused and, as applied to the facts herein recited, comprehends one who has been convicted of an intentional killing.

3. The fact that the conviction in a criminal action is not "final" in the true sense because one who is wrongfully deprived of his liberty in a criminal action may at any time have review of an error growing out of denial of a basic constitutional right does not apply to an attempt by such convicted person to recover in a civil action any part of the estate of one whose death he has feloniously caused or to recover the proceeds of insurance policies issued to that person. Once it is decided that a conviction in a criminal case is conclusive as to facts and issues determined by the conviction, principles of public policy and the interests of litigants require that parties who had a full opportunity to litigate the issues should not be

permitted to reopen and review such facts and issues in subsequent civil litigation.

Reversed.

OPINION

MURPHY, Justice.

This is an appeal from a denial by the Ramsey County District Court of appellant insurance companies' motion for summary judgment. Appellants sought declaratory relief with regard to their liabilities on a number of insurance policies purchased by respondent. T. Eugene Thompson, on the life of his deceased wife, whom he was convicted of murdering. The district court certified as important and doubtful the question of whether Thompson's 1963 conviction of first-degree murder of his wife is conclusive so as to bar his claim as a beneficiary of the insurance policies.[1] The facts in the prior criminal case are set out in detail in our opinion affirming Thompson's conviction.[2] Only those facts which are germane to a determination of the present civil action will be related here.

On the morning of March 6, 1963, Carol Thompson was beaten and stabbed to death in her St. Paul home. Evidence collected at the scene of the crime led to the arrest in Arizona of one Dick W. C. Anderson. Anderson confessed to the murder and implicated several other parties, among whom were Norman Mastrian and respondent. Anderson's testimony at the trial was that he was approached by Mastrian on March 3, 1963, and asked "if he was interested in killing a woman"; Anderson also testified that when questioned Mastrian admitted that "insurance was involved."[3] Richard Sharp, one of the

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[1] Rule 103.03(i), Rules of Civil Appellate Procedure.

[2] State v. Thompson, 273 Minn. 1, 139 N.W. (2d) 490, certiorari denied, 385 U.S. 817, 87 S. Ct. 39, 17 L. ed. (2d) 56.

[3] 273 Minn. 8, 9, 139 N.W. (2d) 497, 498.

men implicated in the conspiracy, testified that Mastrian had earlier offered the job to him, describing the victim as "a churchgoing woman with four children" and "heavily insured." [4]

The facts disclosed are that between February 1962 and January 1963 Thompson purchased nine term policies, totaling $1,055,000, on his wife's life. The policies were to expire on dates ranging from March 15, 1963, to April 9, 1967.[5] In each of the policies Thompson was the named beneficiary. His explanations for acquiring this unusual amount of term insurance were (1) that since his wife would acquire in the event of his death $460,000 of insurance on his life and could expect to inherit $500,000 should her father die, he (Thompson) should be able to anticipate an equal amount in the event of his wife's death;[6] and (2) that "he had a premonition that his wife was going to have a tragic accident on February 8 or 9, 1963." [7]

There was testimony at the criminal trial to the effect that Thompson had been initimate with his secretary over a 2-year period from 1960 and that he had offered to marry her. The testimony showed, however, that his offers were rejected and that his secretary married another man in 1962. It appears that she last heard from Thompson at Christmas time in 1962, more than 3 months before the murder of Thompson's wife. The record fairly establishes that the overriding motive for the murder was to secure the proceeds of the insurance policies rather than the affair with the secretary.

1. It is agreed that Minn. St. 525.87 prevents one who has "feloniously" taken or caused the death of another from

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[4] 273 Minn. 7, 8, 139 N.W. (2d) 497.
[5] See chart, 273 Minn. 39, 139 N.W. (2d) 517.
[6] 273 Minn. 6, 139 N.W. (2d) 496.
[7] Id.

profiting from such wrongful act by inheriting from such person's estate or being a beneficiary of an insurance policy on the victim's life.[8] The core question here is whether a criminal conviction may be considered in a subsequent civil proceeding for the purpose of establishing the truth of the facts upon which the conviction was based. This question must be considered in the light of our prior decision which reviewed at length the issues and procedures involved in the criminal prosecution which resulted in respondent's conviction. It must be recognized that the facts set forth in that decision gave rise to both the criminal and the civil actions with which we are here concerned. The facts and issues in both actions are identical. The issues in the criminal case have been decided, reviewed, and affirmed on appeal. Appellant insurance companies contend that in the posture of these proceedings principles of "estoppel by judgment" or "collateral estoppel" require that the judgment in the criminal case be conclusive as to the issues raised in the civil case. Respondent contends, on the other hand, that because of the absence of the essential element of mutuality (the parties in the criminal proceedings

[8] Minn. St. 525.87 provides: "No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent, or take by devise or bequest from him any portion of his estate. No beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organizations, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued."

not being the same as those in the civil proceedings) principles of estoppel may not be applied.

Collateral estoppel is a limited form of res judicata whereby a former judgment is conclusive in a later suit between the same parties or their privies as to determinative issues finally decided in the former suit. In *Gollner v. Cram*, 258 Minn. 8, 10, 102 N.W. (2d) 521, 523, 83 A. L. R. (2d) 971, 974, we said:

> "The doctrine of collateral estoppel (also referred to as estoppel by verdict) applies where it affirmatively appears that the issue presented has already been litigated in a prior suit between the same parties even though based upon a different cause of action. Unlike the situation where a former judgment acts as an absolute bar, it is an indispensable prerequisite to collateral estoppel that the issue involved be actually litigated and determined in the former suit."

The principle of collateral estoppel has been expressed in varying terms in Brooks Realty, Inc. v. Aetna Ins. Co. 268 Minn. 122, 128 N.W. (2d) 151; Anderson v. Mikel Drilling Co. 257 Minn. 487, 102 N.W. (2d) 293; Lustik v. Rankila, 269 Minn. 515, 131 N.W. (2d) 741. See, Annotation, 83 A.L.R. (2d) 977, 986; 10 Dunnell Dig. (3 ed.) §§ 5161, 5162.

The general common-law rule has been that a criminal judgment is not admissible as evidence in a civil action to establish a fact determined in the criminal action nor does it constitute a bar to a subsequent civil action based upon the offense of which the party stands convicted and that the judgment of conviction is not admissible in evidence for that purpose. Wahl v. Walton, 30 Minn. 506, 16 N.W. 397; Annotations, 31 A.L.R. 261, 18 A.L.R. (2d) 1287, and 42 A.L.R. (2d) 634. It has been held that a conviction precludes neither the bringing of a civil action by a convicted person nor an attempt

to prove that he is innocent of the offense. 30A Am. Jur., Judgments, § 474; 50 C.J.S., Judgments, § 754. In addition to the absence of mutuality in the second suit, other considerations which have influenced courts in so holding are that the judgment may not be conclusive of issues which might have been litigated and determined in the initial action but which were not; failure or inadequacy of legal representation; the drawing of a wrong inference or misapplication of law which might give rise to an erroneous result; and the rule of evidence that the judgment in a criminal case is nothing more than the opinion of 12 jurors and, consequently, hearsay.

It is important to note that an exception to this rule has developed in situations where the convicted defendant attempts by subsequent civil litigation to profit from his own crime, as where an arsonist seeks to recover insurance proceeds for damage caused by the fire which he was convicted of setting, or where a beneficiary convicted of homicide seeks to recover under the victim's life insurance policy. In such situations courts have approached the problem from the point of view of the particular judgment offered as evidence, and have invoked the doctrine of collateral estoppel where the advantages to be derived from preventing relitigation would not be outweighed by the injustice that might result from foreclosing conviction is admissible as evidence, normally prima facie, of the facts upon which it was based, but that it is not conclusive. Colorado has since adopted a statute changing this rule by specifically providing that the judgment of conviction is itself sufficient to disqualify the convicted heir from receiving property of the decedent through intestate succession.[13] The authorities which we choose to follow, and which control the facts in this case, have held that the judgment of convic-

[13] See Colo. Rev. Stat. 1963, § 152-2-13

tion is conclusive in a subsequent civil action and include the jurisdictions of Virginia,[14] Pennsylvania,[15] California,[16] North Carolina,[17] and the United States Court of Appeals for the Seventh[18] and Eighth Circuits.[19] These holdings have been applied in situations where a conviction defendant attempts to profit by his own wrong in a civil action even in the absence of the element of mutuality in the second suit.

The original decision adopting this approach is Eagle, Star & British Dominions Ins. Co. v. Heller, 149 Va. 82, 140 S. E. 314, which was an action on a fire insurance policy brought after the plaintiff had been convicted of having willfully burned the insurer property with intent to defraud the insurer. The defense raised was that the conviction was an estoppel to the action. The court recognized that the judgment of acquittal would not have been binding on the insurance company because it would only be a finding that the plaintiff's guilt was not proved beyond a reasonable doubt and because the company was a stranger to the criminal action. With respect to the judgment of conviction, however, the court said (149 Va. 89, 140 S.E. 316):

> "* * * We confess our inability to perceive, however, why the accused person himself should not be held either as bound or affected by the result of the prosecution, if adverse to him. He has had his day in court, with the opportunity to produce his witnesses, to examine and

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[14] See, Eagle, Star & British Dominions Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314.

[15] See, Griefer's Estate, 333 Pa. 278, 5 A. (2d) 118; Mineo v. Eureka Security Fire & Marine Ins. Co., 182 Pa. Super. 75, 125 A. (2d) 612; Kravitz Estate, 418 Pa. 319, 211 A. (2d) 443.

[16] See, Teitelbaum Furs, Inc. v. Dominion Ins. Co., 58 Cal. (2d) 601, 25 Cal. Rptr. 559, 375 P. (2d) 439.

[17] See, Taylor v. Taylor, 257 N.C. 130, 125 S.E. (2d) 373.

[18] See, Austin v. United States (7 Cir.), 125 F. (2d) 816.

[19] See, Connecticut Fire Ins. Co. v. Ferrara (8 Cir.), 277 F. (2d) 388.

> cross-examine the witnesses for the prosecution, and to appeal from the judgment. So that the chief reason for holding that the plaintiff in the civil case is not bound by the prosecution fails as to the defendant, who has once litigated the identical question and had it adversely decided, under conditions most favorable to himself—that is, in a prosecution in which he could not have been convicted unless the decisive fact, his guilt, had been shown beyond a reasonable doubt."

The court distinguished prior cases as follows (149 Va. 105, 140 S. E. 321):

> "The precedents and the rules of exclusion which have been derived therefrom, which the trial court followed, have generally arisen in cases where one claiming to be injured by the criminal act of another had brought a tort action against the alleged wrongdoer for redress of that injury, most frequently in actions for personal injury—assault and battery. This, however, is not such a case. Here the plaintiff who brings this action has committed the felony, and seeks to recover the fruit of his own crime.
>
> "The rule of exclusion is a shield for the protection of those who have had no opportunity to assert their defense. To apply it here would be to convert it into a sword in the hands of one who has had such an opportunity, to be used by him for the effectuation of the same fraud which has been established, condemned and punished in the criminal case. If there be a rule which cannot stand the test of reason, it is a bad rule."

An impressive number of courts have followed the same rule, largely prompted by a public policy to discourage the use of courts in proceedings which, as the Virginia and New York

courts have said, "would discredit the administration of justice, defy public policy and shock the most unenlightened conscience" and permit a possible result which would "encourage and give support to current thoughtless and carping criticism of legal procedure, and to justify the gibe that the administration of the law is the only remaining legalized lottery." 149 Va. 111, 140 S.E. 323; Schindler v. Royal Ins. Co. 258 N.Y. 310, 313, 179 N.E. 711, 712. See, Austin v. United States (7 Cir.) 125 F. (2d) 816; Teitelbaum Furs, Inc. v. Dominion Ins. Co. 58 Cal. (2d) 601, 25 Cal. Rptr. 559, 375 P. (2d) 439; Connecticut Fire Ins. Co. v. Ferrara (8 Cir.) 277 F. (2d) 388; Fidelity-Phenix Fire Ins. Co. v. Murphy, 226 Ala. 226, 146 So. 387; Kravitz Estate, 418 Pa. 319, 211 A. (2d) 443; Griefer's Estate, 333 Pa. 278, 5 A. (2d) 118; In re Estate of Laspy (Mo.) 409 S. W. (2d) 725; Mineo v. Eureka Security Fire & Marine Ins. Co. 182 Pa. Super. 75, 125 A. (2d) 612; 5 Wigmore, Evidence (3 ed.) § 1671a; 4 Wigmore, Evidence (3 ed.) § 1346a. We agree with appellants that the judgment of conviction in the criminal case is conclusive as to the result of the civil action before us to determine respondent's rights to the proceeds of the insurance policies on the life of his deceased wife. We are constrained to the view that to permit a retrial of the facts and issues already determined in the criminal proceeding would be an imposition on the courts and only tend to embarrass or bring into disrepute the judicial process.

2. It is next contended by respondent that a reasonable interpretation of Minn. St. 525.87 necessarily prevents the court from adopting the rule that a conviction in a given homicide case may in a subsequent civil action be conclusive proof of the facts upon which it is based. This argument derives from language of § 525.87, which states that no person who "feloniously" takes the life of another shall profit from his

wrongful act. Respondent points out that statutes of this kind that existed in other states prior to the enactment of §525.87,[20] provided that persons who have been "finally convicted" or "convicted of feloniously causing the death of another" shall not profit by the wrongful act. Respondent characterizes the latter as a "conclusive" type of statute as opposed to § 525.87, which is characterized as a "non-conclusive" type of statute. It is argued that because the term "feloniously" includes within its broad classification offenses in which intent may not be an essential element the term may

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[20] Compiled Laws of North Dakota 1913, § 5683. "No person who has been finally convicted of feloniously causing the death of another shall take or receive any property or benefit by succession, will or otherwise, directly or indirectly, by reason of the death of such person, but all property of the deceased and all rights conditioned upon his death shall vest and be determined the same as if the person convicted was dead."

Neb. Rev. Stat. 1913, § 1283. "No person who has been convicted of unlawfully killing another, or of conspiring unlawfully to kill another, shall take all or any portion of the property, real or personal, of the deceased, either by descent and distribution or by will; but the property to which the person so convicted would otherwise have been entitled shall go to the person or persons who would have taken the same if the person so convicted had been dead at the date of the death of the deceased."

Id. § 1284. "No person who has been convicted of unlawfully killing another, or conspiring unlawfully to kill another, shall be entitled to any insurance on the life of the deceased. If the person so convicted is the beneficiary under any policy or policies of life insurance, or beneficial certificate or certificates, such insurance shall go to the person or persons who would have been entitled thereto if the person so convicted had been dead at the date of the death of the deceased."

Kan. Gen. Stat. 1915, § 3856. "Any person who shall hereafter be convicted of killing or of conspiring with another to kill, or of procuring to be killed, any other person from whom such person so killing or conspiring to kill or procuring said killing would inherit the property, real, personal, or mixed, or any part thereof, belonging to such deceased person at the time of death, or who would take said property by deed, will or otherwise, at the death of the deceased, shall be denied all right, interest and estate in or to said property or any part thereof, and the same shall descend and be distributed to such other person or persons as may be entitled thereto by the laws of descent and distribution, as if the person so convicted were dead."

ave the same application in both civil and criminal cases, that if the interpretation suggested by appellants is ted, one convicted of manslaughter or of criminal negli- e resulting in death would necessarily come within the ription of the statute.

e cannot share respondent's fears that the language of 5.87 warrants the conclusion suggested. The distinction een the two forms of statute—the one preventing re- y where there is a felonious killing and the other prevent- ecovery by one who was convicted of a felonious killing— little real importance since the determinative question nether or not the killing was actually felonious. It must ept in mind that these statutes declare and establish a y which prohibits a murderer from profiting from a death he wrongfully caused. It may be fairly assumed that the lature intended to abrogate our holdings in Wellner v. tein, 105 Minn. 444, 117 N. W. 830, and Gollnik v. Men- 112 Minn. 349, 128 N. W. 292. In each case a convicted derer was held entitled to a share in his victim's property r the statutes of descent and distribution, Gollnik holding because those statutes were unambiguous the court could construe them to include an implied exception embodying equitable principle that a wrongdoer should not be permit- o profit from his own crime. It seems to us that the legis- es enacting both types of statute were motivated by the e intention although they used different words to provide the wrongdoer may not profit from his own crime. More- , it seems reasonable to us that in giving effect to that table rule the language used, describing such a wrong- as one who "feloniously takes or causes or procures an- r so to take the life of another," comprehends only those have been convicted of intentional killing. Anderson v.

Grasberg, 247 Minn. 538, 78 N. W. (2d) 450. It does not seem to us that the statute would warrant an interpretation that one convicted of negligent homicide would necessarily be barred from recourse to the courts in a subsequent civil action. The statute is meant to apply to those wrongdoers who intentionally cause the wrong and not to those who may have been negligent. See, Rosenberger v. Northwestern Mutual Life Ins. Co. (D. Kan.) 176 F. Supp. 379; Id. 182 F. Supp. 633.

3. It is next contended by respondent that the judgment of conviction cannot have conclusive effect in a subsequent civil action because a criminal conviction is no longer in the true sense "final" even after review and affirmance by appellate courts. This argument derives from Fay v. Noia, 372 U. S. 391, 83 S. Ct. 822, 9 L. ed. (2d) 837; Townsend v. Sain, 372 U. S. 293, 83 S. Ct. 745, 9 L. ed. (2d) 770; and Sanders v. United States, 373 U. S. 1, 83 S. Ct. 1068, 10 L. ed. (2d) 148, cases which Mr. Justice Harlan, dissenting, has characterized as a "trilogy of pronouncements" which "relegate to a back seat * * * the principle that there must be some end to litigation." 373 U. S. 23, 83 S. Ct. 1081, 10 L. ed. (2d) 166. This point may be briefly disposed of by observing that the foregoing authorities give to a convicted defendant who has been wrongfully deprived of his liberty in a criminal action the right at any time to have a review of any error growing out of the denial of a basic constitutional right. We do not understand that these holdings suspend operation of well-established rules of res judicata in civil cases. Once it is decided that the effect of the conviction in a subsequent civil case is conclusive, principles of public policy and the interests of litigants require that parties who had a full opportunity to litigate the issues should not be again permitted to reopen and review over and over again the civil aspects of the determination. 30A Am.

Jur., Judgments, §§ 373, 326; 10 Dunnell, Dig. (3 ed.) §§ 5159, 5162.

We accordingly view the particular judgment of conviction in the context of the facts and issues found in the original proceedings, which have been fully determined by the trial court and affirmed by this court on appeal. The record of the criminal proceedings fully establishes that respondent had an untrammeled right to fully litigate the issues which are identical to those in the action before us. An examination of the record satisfies us that he had every opportunity and incentive to litigate the issue of his guilt. He was himself an experienced lawyer and was afforded all of the protections which surround the modern-day defendant in a criminal trial. The case was decided against him so as to satisfy the burden of proof beyond a reasonable doubt. Full hearings were accorded respondent in post-trial proceedings preliminary to appeal, and the record of the trial and such proceedings were reviewed by this court in an exhaustive and comprehensive opinion; on application by respondent to the Supreme Court of the United States, certiorari was denied. It seems to us that under the circumstances the requirement of finality for the application of the principles of res judicata has been fully satisfied. Restatement, Judgments, § 41.

Reversed.

40903-40908

STATE OF MINNESOTA
IN SUPREME COURT

40903

THE TRAVELERS INSURANCE COMPANY,
Appellant,

vs.

T. EUGENE THOMPSON,
Respondent,

and

OTTO SWOBODA, ET AL.,
Defendants.

40904

CONTINENTAL CASUALTY COMPANY,
Appellant,

vs.

T. EUGENE THOMPSON,
Respondent,

and

OTTO SWOBODA, ET AL.,
Defendants.

40905

TIME INSURANCE COMPANY,
Appellant,

vs.

T. EUGENE THOMPSON,
Respondent,

and

OTTO SWOBODA, ET AL.,

Defendants.

40906

T. EUGENE THOMPSON,

Respondent,

vs.

GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD.,

Appellant.

40907

EDWARD ERNEST NELSON, AN UNDERWRITER AT LLOYD'S, LONDON,

Appellant,

vs.

T. EUGENE THOMPSON,

Respondent,

and

OTTO SWOBODA, ET AL.,

Defendants.

40908

ZURICH INSURANCE COMPANY,

Appellant,

vs.

T. EUGENE THOMPSON,

Respondent,

and

OTTO SWOBODA, ET AL.,

Defendants.

RESPONDENT'S PETITION FOR REHEARING

40903-40908

PETITION FOR REHEARING

Comes now the Respondent and pursuant to Rule 140 of the Rules of Civil Appellate Procedure, respectfully petitions the Court for a rehearing in the above captioned cases. The grounds for the petition are that counsel and the Supreme Court failed to consider a controlling statute, and failed to consider certain principles of law and material questions in these consolidated cases, some of which rest upon the holding in a United States Supreme Court case decided subsequent to the briefing and oral argument in the instant cases.

I. A MINNESOTA STATUTE NOT CONSIDERED BY THE COURT REQUIRES THAT RESPONDENT BE PERMITTED TO LITIGATE THE ISSUES IN THE CIVIL CASES.

The Court's opinion places a construction upon Minnesota Statutes §525.87 which, as a matter of law, precludes Respondent from litigating in the civil court the issue of whether he feloniously took the life of another. This, of course, results in his automatic disqualification from litigating his rights, if any, to the proceeds of the insurance policies. A controlling Minnesota statute that has not been cited to the Court by any of the parties, nor mentioned in the Court's opinion, established that the Minnesota statutory law specifically forbids (a) increasing the punishment for a crime beyond that specifically provided for in the pertinent criminal statute and (b),

preventing a party from litigating his rights to personal property from the fact alone that he had been convicted of a crime. Minnesota Statutes §631.471 provides as follows:

> "Every convict sentenced to imprisonment shall be under the protection of the law, and any unauthorized injury to his person is punishable in the same manner as if he were not convicted or sentenced. *A conviction for any crime does not work a forfeiture of any property, real or personal, or of any right or interest therein.* All forfeitures in the nature of deodands, or in a case of suicide, or where a person flees from justice, are abolished [emphasis added]."

See also Section 11, Article I of the Minnesota Constitution. Though, under the Court's opinion Respondent is prevented from litigating the merits of his claims to the insurance proceeds under a theory of "collateral estoppel," the fact remains that his right or interest in the insurance contracts have been forfeited, under the Court's construction of §525.87, from the mere fact of his conviction. There are no express provisions in §525.87 requiring the forfeiture of Respondent's rights to litigate the issues in the civil suit. Moreover, this construction is contrary to the rule under the common law. *In re Johnston's Estate*, 220 Ia. 328, 261 N.W. 908 (1935). Because of the importance of §631.471, counsel should be permitted further to brief its significance to the issues on this appeal.

II. A NEWLY DECIDED U.S. SUPREME COURT CASE INTERPRETS THE U.S. CONSTITUTION SO AS TO RENDER THIS COURT'S CONSTRUCTION OF §525.87 UNCONSTITUTIONAL.[1]

[1] Notice as required under Rule 24.04 of the Minnesota Rules of Civil Procedure has been given to the Attorney General.

The Court's construction of Minnesota Statutes §525.87 requires that a person convicted of an intentional killing *after a plea of not guilty*, be denied access to the civil courts and that he thereby be precluded from litigating similar material issues in a subsequent civil case.[2] The device used to accomplish this result is the "doctrine of collateral estoppel." However, as is readily conceded by appellants in these cases and as is clearly established in the law, principles of collateral estoppel cannot apply to convictions resting upon *pleas of guilty* to charges of intentional killing.[3] A person is precluded, under the Court's construction of the statute, from litigating issues in a civil case if he is convicted after a *plea of not guilty*, but a party who has *pleaded guilty* to an identical offense will be able to litigate the issues in the subsequent civil cases.[4] Because of significantly different treatment of two types of convictions, the Court's decision denies fundamental, federal constitutional rights to Respondent as protected under the Fifth and Fourteenth Amendments to the United States Constitution.

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[2] Assuming that the criminal case happens to be tried first, which may not always be the situation. Presumably it would now be to the advantage of a potential defendant in a criminal case to rush to the civil court before a criminal action is brought so that, among other advantages, he could have the opportunity to pursue pretrial discovery—a right denied to him by the Court's opinion.

[3] See Travelers Brief, p. 27 at f.n. 40 and text thereto.

[4] This Court has held that a plea of guilty is not conclusive. *Jankowski v. Clausen*, 167 Minn. 437 at 440, 209 N.W. 317 (1926). Moreover, an identical finding in the civil case after a plea of guilty in the criminal case is not a certainty by any means. The party who had pleaded guilty to the criminal offense may well have an explanation for his plea of guilty such as, for example, that his counsel had advised him that there was not sufficient evidence to convince the criminal jury that he was insane under the McNaghten Rules applicable in criminal cases but that he was not responsible for his actions under the civil rules of insanity. See *Anderson v. Grasberg*, 247 Minn. 538, 78 N.W. 2d 450 (1956). There could be many other explanations as well. See *Jankowski v. Clausen, supra.*

The Court's decision, in effect, denies access to the civil courts to one who protests his alleged guilt and asserts his rights under the Fifth and Fourteenth Amendments to plead not guilty. A person, on the other hand, who abandons his rights, for whatever reason, to contest his alleged guilt before a jury is assured that he can try the issues in the civil case in spite of his conviction on the guilty plea. In a decision decided subsequent to the filing of briefs and the oral argument in these cases, the United States Supreme Court enunciated the principle that the imposition of a burden upon the exercise of the constitutional right of pleading not guilty, as contrasted with a situation where such a burden is not imposed upon one who chooses to plead guilty, is unconstitutional. *United States v. Jackson*, 36 U.S. Law Week 4277, —— U.S. ——, 20 L.Ed. 2d 138 (pamphlet) ——S.Ct. —— (April 8, 1968). The Court's opinion in the instant cases subjects a defendant who seeks a jury trial in a criminal case to an *increased* hazard of automatically forfeiting his rights to property. The same consideration does not pertain to one pleading guilty. The *Jackson* decision is of such great significance on the issues on this appeal that a rehearing should be granted so counsel may thoroughly brief the questions.

III. THE COURT'S CONSTRUCTION OF §525.87 DEPRIVES RESPONDENT OF PROPERTY WITHOUT DUE PROCESS OF LAW AND IMPAIRS THE OBLIGATIONS OF CONTRACT IN VIOLATION OF THE UNITED STATES' CONSTITUTION.

Construing Minnesota Statutes §525.87 so as to preclude Respondent from litigating the issues in the civil cases, based

upon a theory of collateral estoppel that necessarily assumes a "final judgment" in the criminal case, denies to Respondent the due process of law guaranteed to him by the Fourteenth Amendment of the United States Constitution. It must be recognized that the Court's conclusion that the criminal judgment is "final" is reached in spite of the fact that there is presently pending, although not mentioned in the opinion, a petition on behalf of Respondent for post-conviction relief in the Hennepin County District Court.[5] The Petition for Post-Conviction Relief was filed in the criminal case in accord with the ruling of Chief Judge Devitt in the case of *Thompson v. Tahash*, 286 F. Supp. 663 (D. Minn. 1968). This court has reached a decision as to the finality of the criminal judgment in spite of the present collateral attack on that judgment, and in spite of the specific exception to the theory of collateral estoppel, recognized by Judge Traynor in *Teitelbaum Furs, Inc. v. Dominion Insurance Company*, 25 Cal. Rptr. 559, 375 P. 2d 439 at 442 (1962) that a criminal judgment is not final for purposes of res judicata if it is subject to collateral attack.[6] In fact, the criminal judgment in the instant case is not

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[5] Counsel assumes that the Court received counsel's letter of September 25, 1968, enclosing a certified copy of the docket entries reflecting the petition for post-conviction relief in the Hennepin County District Court.

[6] This Court's opinion relied upon Restatement, Judgments, Section 41 to support its conclusion of "finality." The Restatement specifically provides, however, that its provisions do "not deal with the effect of a judgment in a criminal proceeding upon a subsequent civil action." Restatement, Judgments, p. 2.

The fact that the United States Supreme Court denied *certiorari* in the Thompson criminal proceedings should not be viewed as a ruling on the merits of the claims. *Thompson v. Tahash, supra*, 286 F. Supp. 663 at 665, and cases cited therein.

Judge Devitt in *Thompson v. Tahash, supra*, indicated that the case of *Sheppard v. Maxwell*, 384 U.S. 333, *decided after this Court's decision in State v. Thompson*, 273 Minn. 1, substantially changed the rules pertaining to prejudicial publicity which the trial court in the *Thompson criminal* proceedings followed. See 286 F. Supp. at 665. Moreover, Judge Devitt stated that certain claims made by

only *subject to* collateral attack, as contemplated in *Teitelbaum*, but is in the process of being so collaterally attacked. The necessary effect of the Court's decision is that Respondent has forever lost his fundamental right to a day in court if he should obtain a new trial in the criminal proceedings and later be acquitted. The effect of the original criminal conviction, even though erroneous, null and void, would still, under the Court's opinion, be determinative of his rights, if any, under the insurance policies. See, and compare, *e.g., Sheppard v. Maxwell*, 384 U.S. 333, 16 L.Ed. 2d 600, 86 S. Ct. 1507 (1966). Such a construction of §525.87 clearly violates the requirements of the Fourteenth Amendment of the United States Constitution that no state shall "deprive any person of life, liberty, or property, without due process of law." Similarly, the Court's construction of the statute constitutes a violation of Section 10 of Article I of the United States Constitution in that the statute as construed by the Court impairs the obligations of the insurance contract between appellants and Respondent.

IV. THE COURT'S CONSTRUCTION OF §525.87 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

As interpreted by the Court, Minnesota Statutes §525.87 is violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution because it denies Respondent access to the civil courts solely because of his conviction for an intentional killing, *after a plea of not guilty*,

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Thompson in the Federal habeas corpus proceeding were "not presented to, or ruled upon, by the state courts." 286 F. Supp. at 665-666.

while at the same time permitting a person who has *pleaded guilty* to the same offense to have access to the civil courts to litigate the questions of whether, under different civil policy considerations,[7] "a felonious killing" occurred under Minnesota Statutes §525.87. *Cf. C. H. Cochran v. State of Kansas*, 316 U.S. 255, 86 L. Ed. 1453, 62 S.Ct. 1068 (1942).

CONCLUSION

Respondent believes that he has brought to the attention of the Court a controlling statute that has not previously been considered by the Court. In addition, Respondent believes that he has raised certain fundamental constitutional questions arising out of the Court's interpretation of §525.87 and that justice requires that the Court grant this Petition so that the parties may adequately brief their respective positions on these significant issues.

Should the Court decide to deny this Petition for Rehearing in spite of counsel's contention that the issues require further elaboration by way of briefs, and perhaps oral argument as well, it is respectfully requested that the Court indicate in the form of its denial that it has carefully considered the claims of Respondent in this Petition but has rejected

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[7] Such as, for example, differing rules for determination of insanity. In addition, a defendant in a criminal case may desire to waive his right to a jury trial, but in so doing he would automatically waive his right to a jury in the civil issues, whether he wants to or not.

them. See *Ordean v. Grannis*, 118 Minn. 117 at 127, 136 N.W. 575 at 1026 (1912).

Respectfully submitted,
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STATE OF MINNESOTA
IN SUPREME COURT

40903-40908
40903
THE TRAVELERS INSURANCE COMPANY,
Appellant,
vs.
T. EUGENE THOMPSON,
Respondent,
and
OTTO SWOBODA, ET AL.,
Defendants.

40904
CONTINENTAL CASUALTY COMPANY,
Appellant,
vs.
T. EUGENE THOMPSON,
Respondent,
and

OTTO SWOBODA, ET AL.,

Defendants.

40905

TIME INSURANCE COMPANY,

Appellant,

vs.

T. EUGENE THOMPSON,

Respondent,

and

OTTO SWOBODA, ET AL.,

Defendants.

40906

T. EUGENE THOMPSON,

Respondent,

vs.

GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD.,

Appellant.

40907

EDWARD ERNEST NELSON, AN UNDERWRITER AT LLOYD'S, LONDON,

Appellant,

vs.

T. EUGENE THOMPSON,

Respondent,

and

OTTO SWOBODA, ET AL.,

Defendants.

40908

ZURICH INSURANCE COMPANY,

Appellant,

vs.

T. EUGENE THOMPSON,

Respondent,

and

OTTO SWOBODA, ET AL.,

Defendants.

40903-40908

RESPONDENT'S SUPPLEMENTAL CITATION OF AUTHORITY ON PETITION FOR REHEARING

Respondent's Petition for Rehearing was mailed to the Court on November 1, 1968. There appeared in the November 5, 1968, issue of *Finance and Commerce* the text of this Court's decision in *Chapman v. State of Minnesota* (File No. 41285, Docket No. 203, filed on November 1, 1968). This case illustrates one of the arguments by Respondent in his Petition for Rehearing.

In footnote 4 on page 4 of Respondent's Petition for Rehearing, the point was made that a defendant who had *pleaded guilty* to an intentional killing in a criminal case would be in a position to put forth various possible explanations for that plea of guilty in a later civil case. In that footnote the case of *Jankowski v. Clausen*, 167 Minn. 437 at 440, 209 N.W. 317 (1926) was cited for this proposition.

In *Chapman v. State of Minnesota, supra,* the Court has actually listed at least seven possible grounds on which a defendant who may have pleaded guilty in a prior criminal matter could attempt to explain away his plea of guilty in a sub-

sequent civil case involving similar issues. Moreover, the holding of the case itself suggests another, additional explanation that a defendant such as Chapman could give. In *Chapman, supra,* the Court held that the pre-Miranda rules would apply to the defendant there on re-trial even though the trial would be post-Miranda. A defendant, such as Chapman, who may have pleaded guilty under the pre-Miranda Rules could, in a subsequent civil trial on issues relating to his right to insurance proceeds on the life of the deceased, explain his plea of guilty on the grounds that it was entered because of statements made by him while he was in custody, that he had not been advised of his right (a) to counsel at public expense, or (b) to maintain silence if he preferred or (c) that any statement given by him might be used in evidence against him. He could urge that he was not actually guilty of the offense and that his guilty plea was the result of the failure to accord him rights guaranteed under the decision in *Miranda v. Arizona,* 384 U.S. 436, 16 L.Ed. 2d 694 (1966). Significantly there would not then be a situation where there would be any "prejudice to the state" which this Court relied upon in *Chapman* to apply the pre-Miranda rules to Chapman's re-trial.

As pointed out in the Petition for Rehearing, a defendant in a criminal case who has pleaded not guilty and been convicted in spite of his protests of innocence would not have the opportunity, under the Court's decision in the instant case, to litigate his rights, if any, to the insurance proceeds, while a defendant in a criminal case who had pleaded guilty and conceded his guilt to the offense charged would have an opportunity later in a civil trial to explain away his guilty plea in a variety of ways. The disparity of treatment of persons who have pleaded guilty as opposed to those who have been convicted after a plea of not guilty results in a deprivation to Re-

spondent of due process of law and equal protection of the laws as guaranteed by the United States Constitution. See *United States v. Jackson*, 36 U.S. Law Week 4277, 20 L.Ed. 2d 138 (April 8, 1968).

Respectfully submitted,
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333-1346

(Petition denied)

STATE OF MINNESOTA
OFFICE OF CLERK OF SUPREME COURT
St. Paul, Minn.

January 14, 1968

Travelers Insurance Company, et al,
Appellants,
vs. 40903-4-5 and 40907-8
T. Eugene Thompson, et al,
Respondents.

Otto Swoboda, Spec. Admr., etc., et al,
Respondents,
vs. 40906
General Accident Fire & Life Assurance Corp., Ltd.,
Appellant.

Sir:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully,
MAE SHERMAN,
Clerk Supreme Court.

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

T. EUGENE THOMPSON,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

File No. 48680

PETITION FOR POST CONVICTION RELIEF

The petitioner, T. Eugene Thompson, through his attorneys, F. Lee Bailey and Ronald I. Meshbesher of Robins and Meshbesher, respectfully petitions the Court for post conviction relief pursuant to Minnesota Statutes 590.01-06 and alleges:

I.

That on October 28, 1963, the petitioner was put to trial on a charge of first degree murder in the District Court of Hennepin County before Fossen, J. and a jury (Hennepin County District Court Criminal File No. 48680). That on December

6, 1963, the jury returned a verdict of guilty and petitioner was sentenced to life imprisonment. That petitioner is presently incarcerated by the State of Minnesota pursuant to said sentence and is unlawfully restrained for the reasons set forth below.

II.

That the aforesaid Judgment of guilty was appealed to the Minnesota State Supreme Court and on January 18, 1966, the conviction was affirmed. *State of Minnesota v. Thompson*, 237 Minn. 1, 139 N.W. 2d 490 (1966). See also *State of Minnesota v. Thompson*, 266 Minn. 385, 123 N.W. 2d 378 (1966). That thereafter a Petition for a Writ of Certiorari was filed with the U. S. Supreme Court, which petition was denied. 385 U.S. 817, 87 S.Ct. 39, 17 L.Ed. 2d 56 (1966). That thereafter a Petition for a Writ of Habeas Corpus was filed with the U. S. District Court, District of Minnesota, Third Division, which petition was denied on May 7, 1968, on the grounds that the petitioner had not availed himself of his rights under the newly enacted Minnesota Post Conviction Remedy Act (Minn. Stat. 590.01 et seq) *Thompson v. Tahash*, 3-67-Civ.-209 (U.S.D.C. Minn. 1968), a copy of which opinion is attached hereto.

III.

That the petitioner was denied his constitutional right to a fair and impartial trial for the reason that the community and specifically the jury pool from which the petitioner's trial jury was drawn was so envenomed by massive and sustained prejudicial pre-trial publicity as to preclude any reasonable likelihood that a fair jury could be impaneled.

The facts will show that a great deal of material concerning the prosecutor's theory of petitioner's guilt and the evidence upon which it expected to rely was suspended throughout the community prior to trial through news media of every form.

IV.

That the petitioner was denied his constitutional right to a fair and impartial trial because the prosecutor, police and their agents stimulated some of the adverse publicity, which contaminated the jurors, by releasing information and making prejudicial pre-trial statements to the news media that were improper and unethical and calculated to persuade those exposed to such statements of petitioner's guilt.

The facts will show that the prosecutor and police made statements to members of the press which implicated petitioner as the man responsible for his wife's death, including, but not limited to statements that Larry McMullen, a deputy sheriff, disclosed that Richard Anderson said he had been hired by Thompson to kill Thompson's wife; that police officials said that the Thompson murder was "now solved completely" on the day of Thompson's arrest; and that prosecutor William Randall complained to the press that Thompson had failed to come to his (Randall's) office to discuss the matter, even though Randall was waiting.

V.

That the petitioner was denied his constitutional right to a fair and impartial trial when the prosecutor offered and the Court received, over petitioner's objection, pure hearsay testimony which deprived him of his right to confront the witnesses against him and thus, caused his conviction.

The facts will show that the prosecution used, as part of its evidence, testimony by alleged assassin-conspirators Anderson, Butler, Ingram, Morris, and Sharp, none of whom had ever met, seen or talked with the petitioner, that they were hired to kill Thompson's wife by one Mastrian who said he was acting for Thompson. Mastrian did not testify and could not be produced, since he was then under indictment and await-

ing trial for the same murder. No conspiracy was established by evidence extrinsic to the testimony of these five.

VI.

That the petitioner was denied his constitutional right to a fair and impartial trial when the prosecutor used in evidence against him, material which was unconstitutionally and illegally seized from petitioner's home by police officers who were acting unlawfully.

The facts will show that the St. Paul Police searched petitioner's home without probable cause to believe he had committed the crime and without a warrant. Evidence derived from this search was admitted against him over his objection at trial.

VII.

That the petitioner was denied his constitutional right to a fair and impartial trial when the prosecutor used against him, testimony which was known to be false by the prosecutor, who allowed it to stand uncorrected, and which was procured by promises made by the prosecutor to the witnesses against the petitioner, although the prosecutor assured the jury in his final argument that none of "the witnesses have testified as a result of any persuasion or counseling or advice by our office or by the police".

The facts are that Anderson, Butler, Ingram, Morris and Sharp denied at petitioner's trial directly or indirectly that they had been promised anything in exchange for the testimoney against petitioner. As to each of these men, such denials were untrue because the prosecutor had in fact made elaborate and definitive promises to each as to leniency in their individual cases. Butler, Ingram, Morris and Sharp, all of whom had lengthy criminal records, and who were all charged with felonies at the time they testified, either had the

charges dismissed or their sentence stayed or suspended after the conclusion of the petitioner's trial.

VIII.

That the petitioner was denied his constitutional right to a fair and impartial trial when this Court failed to grant a new trial based on newly discovered evidence which, had it been submitted to jury, would have changed the Judgment of conviction to a Judgment of acquittal.

The facts are that after petitioner's conviction, Dick W. C. Anderson, the chief witness against him recanted, stated that his entire testimony was concocted, and that it had been induced by the false and clandestine promises of prosecutor Randall, who expected to become as a result of publicity attending Thompson's conviction, the governor or the attorney general of Minnesota and who from that high position would then sharply reduce Anderson's sentence for his admitted murder of Mrs. Thompson.

IX.

That the petitioner was denied his constitutional right to a fair and impartial trial when his attorney failed to adequately and competently represent him.

The facts are that (a) defense counsel, although instructed to do so and although funds were made available, made almost no pre-trial investigation of the case against petitioner; (b) defense counsel failed to move for a second change of venue (from Hennepin to some other County) although he informed petitioner that such motion had been made; (c) defense counsel failed to move for a mistrial following the assassination of President John F. Kennedy even though such assassination had come to the jury's attention, and even though defense counsel represented to petitioner that such a motion had been made.

WHEREFORE, Petitioner prays as follows:

1. That an Order be issued for an evidentiary hearing where proof of allegations herein can be offered.

2. That an Order be issued directing the respondent to produce petitioner at all hearings held by this Court.

3. That after a hearing on the merits an Order be issued directing that the petitioner's conviction be set aside and the petitioner discharged from further custody or in the alternative granting him a new trial.

4. For such other and further relief as law and justice may require.

F. LEE BAILEY and
ROBINS & MESHBESHER
By Ronald I. Meshbesher
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Dated: September 13, 1968

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

3-67-Civ-209

T. EUGENE THOMPSON,

Petitioner,

vs.

RALPH TAHASH, Warden,
Minnesota State Prison,

Respondent.

MEMORANDUM & ORDER

Ronald I. Meshbesher, Minneapolis, Minnesota, attorney for Petitioner.

Petitioner, an inmate of the Minnesota State Prison at Stillwater, under a sentence of life imprisonment imposed on December 6, 1963 for first degree murder, has filed a petition for a writ of habeas corpus claiming violation of his federal constitutional rights. Following a plea of not guilty, a jury found him guilty of murdering his wife. The Minnesota Supreme Court affirmed his conviction on January 18, 1966, 237 Minn. 1, 139 N.W. 2d 490 (see also 266 Minn. 385, 123 N.W. 2d 378).

The United States Supreme Court denied a petition for a writ of certiorari on October 10, 1966. 385 U.S. 817, 87 S.Ct. 39, 17 L.Ed. 2d 56.

Petitioner was represented by counsel at every stage of the proceedings.

Petitioner alleges several grounds in support of his claimed unlawful custody. He claims that prejudicial publicity prevented his obtaining a fair trial, hearsay testimony was improperly received against him, the prosecutor used illegally obtained evidence, he was wrongfully denied a new trial on the grounds of newly discovered evidence, and the prosecutor knowingly used perjured testimony against him, which the Petitioner denominates as subornation of perjury.[1]

It appears from the petition that the Petitioner has not filed a post-conviction petition in the state court under the Habeas Corpus Act, by way of corum nobis, or otherwise.

Although the Petitioner alleges that he has exhausted his available state court remedies it should be noted that since the petition for writ of certiorari was denied by the United States Supreme Court on October 10, 1966, the Minnesota Legislature has enacted comprehensive post-conviction remedy which is now available to him. Laws, 1967, Ch. 3361, M.S.A. 590.01, *et seq.* It provides for relief from the violation of a convicted person's rights under the United States Constitution such as is here claimed by the Petitioner. Provision is made for an evidentiary hearing where required. M.S.A. 590.04. The Minnesota Supreme Court has stated that the rules governing the grant or denial of an evidentiary hearing should be substantially comparable to those which afford state prisoners a trial-type hearing in the federal courts. *State ex rel. Roy v. Tahash,* 152 N.W. 2d 301 (1967). Appeal is available to the Minnesota Supreme Court. M.S.A. 590.06.

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[1] The petition states the facts in support of this ground to be that: "Anderson, Butler, Ingram, Morris, and Sharp denied at petitioner's trial directly or indirectly that they had been promised anything in exchange for the testimony against petitioner. As to each of these men, such denials were untrue because the prosecutor had in fact made elaborate and definitive promises to each as to leniency in their individual cases.

It thus appears that the Petitioner does have an available and effective state court process through which to obtain adjudication of the claimed wrongs. The entertaining of a federal habeas corpus application is made contingent upon a showing of an absence of adequate state relief. 28 U.S.C.A. 2254.

The federal courts may not, with propriety, impinge upon the prerogatives of the state courts. The rules of comity require us to stay our hand in situations of this kind in order to allow the state courts every opportunity to administer their criminal laws and procedure in a light becoming to the current Constitutional standards applicable to the states under the Fourteenth Amendment to the United States Constitution. *Fay v. Noia*, 372 U.S. 391, 83 S.Ct. 822; *Roach v. Bennett*, Eighth Circuit No. 18,914, April 15, 1968, —— F. 2d ——; *Baines v. Swenson*, 384 F. 2d 621 (1967).

The Court of Appeals for this Circuit has observed in an analogous fact situation that:

> ". . . as a matter of appropriate federal-state relationship and fitting judicial deference in this special situation, the federal courts ordinarily, before entertaining an application by a state prisoner for federal habeas corpus relief, should require him *to again seek* consideration and determination of his claims of constitutional violation under the state's collateral-attack remedy, in order to give the state courts the opportunity to examine and deal with such claims. . . ." [Emphasis supplied by court in *Baines, supra.*]

Donnell v. Nash, 323 F. 2d 850, 851; see also *Barry v. Sigler*, 373 F. 2d 835 (8th Cir. 1967); *Cyronne-de Virgin v. State of Missouri*, 341 F. 2d 468 (8th Cir. 1965), *cert. denied*, 382 U.S.

895; *Ellenson v. Fugate*, 346 F. 2d 151 (8th Cir. 1965); *Dabney v. Sigler*, 345 F. 2d 710 (8th Cir. 1965); and *United States v. Wallack*, 231 F. Supp. 733 (S.D.N.Y. 1964).

These principles are particularly applicable here where, it appears, a principal thrust of the petition is directed to the claimed prejudicial publicity before and during the trial which deprived the defendant of his Sixth Amendment right to a fair trial. It will be recalled that the Minnesota Supreme Court's decision was rendered on January 18, 1966, some six months before the United States Supreme Court decision in *Sheppard v. Maxwell*, 384 U.S. 333, so that the Minnesota courts have not had an opportunity to pass on Petitioner's claims dealing with prejudicial publicity tainting the community and the trial in the light of the Supreme Court's landmark pronouncements in *Sheppard*.

That decision substantially altered previously held judicial views in this field, including the wide range of discretion previously afforded the trial court's determinations. Now appellate courts are obligated ". . . to make an *independent evaluation* of the circumstances . . .," clearly implying a *de novo* examination of the prejudicial publicity issue. *Sheppard v. Maxwell*, 384 U.S. 333, 362. See *Maine v. The Superior Court of Mondocino County*, S.F. 22588; *Braun v. The Superior Court Court of Mondocino County*, S.F. 22589, Supreme Court of California, March 18, 1968, 35 L.W. 2578, 66 Cal. 724.

While the petition for a writ of certiorari was denied by the United States Supreme Court on October 10, 1966, after *Sheppard*, such a denial may not properly be viewed as a ruling on the merits of the claims. *United States v. Carver*, 260 U.S. 482, 490, 43 S.Ct. 181, 182.

Our subscription to the rules of comity is made more compelling in this case because it appears from the petition, from

an examination of the Minnesota Supreme Court decision, and from all of the court records made available to us by the attorney for the Petitioner, that each of the grounds claimed as a basis for habeas corpus relief here was not presented to, or ruled upon, by the state courts. This is signally true of the subornation of perjury claim, alleging that the prosecutor made "elaborate and definitive promises" of leniency to each of five key state's witnesses, and as to which the Petitioner concedes that in the state court proceedings the claim was "euphemized somewhat" and "was not clearly delineated." Petitioner states that "a full and fair hearing has never been heard in the state court."[2] He should ask for it. A resolution of the subornation claim may well require an evidentiary hearing. *Fay v. Noia,* 372 U.S. 312 (1963); *State ex rel. Roy v. Tahash,* 152 N.W. 2d 301, 305 (1967). This properly should be done in the state court. *Jackson v. Denno,* 84 S.Ct. 1774 (1964). A full hearing in the state court would make unnecessary evidentiary hearings in the federal court. *Giles v. Maryland,* 386 U.S. 66, 87 S.Ct. 793.

The Minnesota courts are entitled to have each issue presented to it, and with clarity and in non-euphemized language, so that it may have an opportunity to pass upon each of them before the federal courts are asked to take jurisdiction.[3]

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[2] Petitioner states that: "Butler, Ingram, Morris and Sharp have never been made to testify about the promises they received; likewise, the presiding officials who made those promises have never been forced to state for the record (a) what the promises were; (b) when they were made; (c) why this information was kept from both the petitioner and the jury."

[3] The Minnesota courts have other issues pending in connection with the death of petitioner's wife. The appeal from the conviction of Norman Mastrian for the same crime, a related prosecution and involving, it would appear, the subornation of perjury claim, has been filed but not yet argued in the Minnesota Supreme Court. Civil law suits for the recovery of more than one million dollars of life insurance upon the life of Mrs. Thompson pend in the Minnesota courts.

"It has long been settled law that the federal courts will not consider on habeas corpus claims which have not been raised in the state tribunal." *Darr v. Burford*, 339 U.S. 200, 70 S.Ct. 587 (1950).

Although it is axiomatic, it should be recalled that in matters of this kind the United States Courts are not superior to, but rather co-equal with, the state courts. Each court has equal responsibility to safeguard United States Constitutional rights and each has equal authority to do so. *Testa v. Katt*, 330 U.S. 386 (1947). With the enactment of the new Minnesota Post-Conviction Law, the federal and state courts now have equally comprehensive post-conviction statutes with which to protect these rights.

Respectful of the rules of comity between the federal and state court systems, we stay our own hand here for the purpose of affording the Petitioner an opportunity to employ the state judicial machinery to redress all of his claimed wrongs.

The petition is denied without prejudice.

Dated: May 7, 1968.

EDWARD A. DEVITT
Chief Judge, U. S. District Court
District of Minnesota

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

File No. 48680

T. EUGENE THOMPSON,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF

The petitioner, T. Eugene Thompson, through his attorneys, F. Lee Bailey and Ronald I. Meshbesher of Robins, Meshbesher, Singer & Spence, respectfully petitions the Court to consider the following allegations as supplemental and in addition to allegations I through IX contained in the Petition for Post Conviction Relief filed on September 13, 1968:

X.

That the petitioner was denied his constitutional right to a fair and impartial trial when the prosecutor failed to disclose to the petitioner or his counsel certain exculpatory evidence contained in the prosecution and/or police files, which evidence would have tended to establish the petitioner's innocence.

The facts will show that the prosecutor and the police had certain information in their files which was relevant to establishing the petitioner's innocence, including, but not limited

to, the fact that scientific investigation showed that Type B blood was found in the petitioner's home on the day of his wife's brutal murder although both the petitioner's wife and Dick W. C. Anderson, the admitted killer, had Type O blood. This evidence would indicate that someone in addition to Dick W. C. Anderson was in the petitioner's home and involved in the murder contrary to Dick W. C. Anderson's sworn testimony.

XI.

That the petitioner was denied his right to a fair and impartial trial when his constitutional rights were violated when the prosecutor, the police and their agents invaded the petitioner's privacy, including, but not limited to, the tapping of the petitioner's telephone lines and intercepting personal and confidential communications without the petitioner's permission, consent or knowledge.

XII.

That the petitioner was denied his constitutional right to a fair and impartial trial since the totality of the circumstances constitute a denial of due process of law, as well as a violation of natural justice as embodied in the Ninth Amendment to the Constitution of the United States of America which incorporates fundamental principles of fairness deeply rooted in the traditions and conscience of our people.

WHEREFORE, Petitioner prays as follows:

1. That an Order be issued for an evidentiary hearing where proof of allegations herein can be offered.

2. That after a hearing on the merits an Order be issued directing that the petitioner's conviction be set aside and the petitioner discharged from further custody or in the alternative granting him a new trial.

3. For such other and further relief as law and justice may require.

F. LEE BAILEY and
ROBINS, MESHBESHER,
SINGER & SPENCE
By Ronald I. Meshbesher
Attorneys for Petitioner
1616 Park Avenue
Minneapolis, Minnesota 55404
Telephone: 339-9121

Dated: February 10, 1969.

TYPEWRITTEN COPY OF LETTER FROM DICK W. C. ANDERSON

Governor Karl Rolvaag and Chief Justice Oscar Knutson:

I am giving this statement of my own free will and also to clear my conscious of some guilt concerning the Carol Thompson case.

First of all I want you to know how this idea was conceive. It started with all the insurance money and about Mr. Thompson in the papers and t.v. that he would not talk with the police about her death. Than when I was pick up in Phoenix, Arizona the detectives started to question me they never seem to be interested in how or why it happen always who hired me to kill her. They kept saying the names of Mastrian and Thompson. At this time I did not give the detectives any information on the case at all but I hinted a connection between Mr. Thompson and myself. I called a lawyer when I was at Phoenix and told him I had killed Mrs. Thompson for Mr. Thompson and that if he would fly up and see Mr. Thompson that he would give him money to defend me. Mr. Johnson

the lawyer did come up and see Mr. Thompson but he wouldn't have anything to do with it. At this time I thought I could beat the charge of murder because it did not happen that way especially with a good lawyer. And when I did beat it I was in a good position to blackmail Mr. Thompson. And if I didn't get the lawyer I could still make a deal with the prosecutor. At this time I know Morris had been staying at Mr. Mastrian house because he had told me about it. Morris had been staying their because he was getting a divorce from his wife. Morris had also told me that Mr. Mastrian had been question by the police concerning the Eddie James case. So the stage was all set for me where by the police would believe what I told them. I had known Sharp Butler Ingram and Morris from before and we all had been involve in deals together. At this time I knew only what Morris had told me about Mr. Mastrian. After I was brought back to St. Paul the evening before the grand jury met Mr. Randall had me up to his office to explain to me the different degrees of murder and how much time I could get on each one.

At this time there were several detectives in his office with us and he also informs me of my right to appear or not to. When I went from their I left with him the impression that I might know more about the case. From the time the two indictments were handed down I was question numberless times. On June 19th when I went over to be arraign I was waiting in the bullpen to go in to court when Morris came in and we had a chance to talk together. He then told me what he had told the grand jury to get himself clear of the murder charge. Then Capt. Vern Phillips came in and pretended that Morris wasn't suppose to be in their with me and that he was going to raise hell with the bailiff. When I was at Phoenix in jail I had a chance to talk to Sharp through a crack in between the

two tanks we were in. One time they made a mistake and put Sharp in the same tank with me I told him at that time what my plans were and pointed out to him that he might be able to get clear of the burglary charge. I also told him that Ingram and Butler might get a deal on the stickup charges.

I also told him that Morris might be able to get away from the murder charge if he would go along with the story. I told him if he could get word to them it would work out find. As luck would have it they all four got put in the same tank together. Just after the murder about this stage I went to Sharps house and drank with him Butler and Ingram they knew that I had plans to burglarize the Thompson house. So after the murder came out over the t.v. and newspaper they knew that I had done it. So to scare them and keep them from talking to much I told them it was a hired killing and I had got three thousand. I also called Morris from Sharps house and demanded my money that I had coming. I had bought the gun from Sharp about a week before the murder for 25 dollars. I also knew that Morris had got his information through Mr. Mastrian about the Thompson house and the money that was in it. Morris had burglarize the house in Dec. of 1962 and had got about $500.00 dollars from it he had told me. So he told me about it and said he wanted 25% of the money I would get and then he gave me the lay out of the house and their routine and told me about the dog that they had their. He told me also that the doors were most often open. The men that testify at the Mastrian trial were telling the truth I did know them. I did ride around the highland park with Gray and ask Oar to make a key one time or more. I did know Bell quite well and I talk to him at the Old Southern Barbecue before and after the murder. I went to the Thompson house at about 6 in the morning to wait until everybody had left the reason I done this

was because Morris had felt there was more money in the house then he had gotten and I thought with Mrs. Thompson their she could tell me where it was I could tie her up and leave and have plenty of time to get away. I had a big handkerchief that I used for a mark. I carried the rubber hose in case the dog would give me any trouble or she didn't want to tell me where the money was. After everybody had left I went upstairs from the basement lock the front door with the night chain. I went up to the second floor she must had just gotten out of bed because she was just getting ready to take a bath, she got real excited and started to scream at this point I had the mask on and I hit her with the hose and knock her out this was in the bathroom. I then carried her in the bedroom and then I started to go through the dresser drawers where I found $125 dollars. She then came to and started to fight me then I hit her with the gun she ran down stairs I caught her at the front door I tried the gun it wouldn't work I hit her quite a few times I went crazy in the head I got a knife and then stab her I went up stairs to wash up and to take off the gloves I had on thats went she got up and left the house and I heard the door close. I then ran down stairs and saw that she was gone and went back to the car and went home. Then Morris call to see how much money I had gotten and I told him $125 and that I had trouble and had some things to get rid of. He said Mastrian was with him. I told him to drop him off somewhere and come and pick me up. He did drop Mastrian off before he pick me up and then we went and got rid of the gun. Thats how Morris knew right where the gun was. At this time Morris had told me about how he had driven Mastrian over to Thompson office and that Thompson was his attorney and that Thompson was buying some stocks from Mastrian and that they had gone to school together.

After I had been arraign on June 19 and had been back in the county jail for about three hours when Lt. Barkley came over to my cell and said Morris wanted to talk to me. And would I talk to him if they put us in the grand jury room. He pointed out to me the grand jury room could not be bug. At this point I had just about decided their would be no help coming from Thompson for an attorney. And that I had waited long enough to get a good deal from Randall. So I argued to talk with Morris. They put us in the grand jury room together. Then Morris told me that Randall had told him that if I made a statement about Thompson and Mastrian that he would see to it that the murder charge would be drop to second and that I wouldn't have to do more than five years. I and Morris must had stayed there for about one hour and a half and talk.

When I went back to my cell Barkley ask if I had anything I wanted to tell him. At this time I told him no that I wanted to talk to my attorney first. At this time Tom Moore was my attorney and I talk to him the next day about it June 20th. And he said it was a good deal to get out of murder 1st. So I called Barkley and we all agreed to meet at 4 P.M. in the grand jury room. When I got their Moore Barkley and Larry McMullen were their and had a tape recorder. And we had to wait for Randall because he was late in getting their. When Randall got their the tape recorder was turn on but Randall would not say anything about murder second when the recorder was working. So Moore told me not to say anything and got mad at Randall so we all got up and left. Then they took me back to jail by this time it was five o'clock and time to eat. At this time I knew that Randall and Moore never got along because Moore had won to many cases from the county attorney office. After supper that night Barkley Phillips and McMullin call me out and they all had a argument about Randall because he

would not confirm murder second to Tom Moore. After they had got alone with their argument they ask me to talk to Randall alone and see what he would say I agreed to this. They then took me over to the sheriffs office and pretty soon Randall came and they put us in a room together.

This is when Randall told me about murder second and what he was going to do for Sharp Butler Ingram and Morris. That he was going to get all other charges drop for them and that the only time they would spend in jail was when they were waiting for the trials. He then ask me if I had a pretty good record or not because they couldn't dig up very much about me and that it appear I did have. He said *that he would have a investigator go over my background which he did and it turn out that the insurance co. paid for it and he got it back in Oct. He said that he would sent a good report to stillwater with me.* Then he pointed out the DeGood case to me and told me what he had done for DeGood. Then he told me he was going to run for governor in 1966 and that this case would make sure that he got in office okay. And that with the influence he would have being governor that he might be able to get me out before five years on parole.

So by this time he had me convince of what he could do and I decided to go ahead with out Moore's okay which I did. After I gave the statement nothing seem to good for me. After the Thompson the detectives took me to eat at Lee's restaurant in highland park. Just before the Mastrian trial he bought me a pair of shoes which can be confirm by Capt. Olson at the county jail.

Vern Phillips also took me out to eat two times before the Mastrian trial. When I came back with Randall G. Weber and Mrs. Maxwell from the Mastrian trial in Randall's car he bought me a steak. About two months after the Mastrian trial

he call me in to his office and said that he talk to all the judges and that none of them would go along with second degree murder. But for me not to worry that if I would plead guilty to first degree murder it would work out better for him because the attorneys for Thompson and Mastrian were filing appeals and they were howling about the other witnesses getting off.

48680

STATEMENT

DICK W. C. ANDERSON, interviewed on July 8, 1964, at 10:20 o'clock A.M., at Stillwater, Minnesota, State Penitentiary by C. Paul Jones, Esq.

By Mr. Jones:

Q. My name is C. Paul Jones, Dick, glad to know you.

Q. Why don't you sit down. I am an attorney and I represent Gene Thompson on his appeal to the Minnesota Supreme Court. I am not the man that tried the lawsuit. I am merely writing the appeal for him, and I would like to talk to you a little bit anyway about some of the facts in this case.

The reason that I am doing it now rather than sometime later or sometime before is that I understand that you at least started to writ a letter to the Governor and the Chief Justice of the Minnesota State Supreme Court and since that time have written something addressed to the Governor and, of course, as Thompson's attorney, I am interested in the factual situation here and that's the reason I want to talk to you.

A. I made out a letter to the Governor. I believe I started it on a Thursday and hadn't completed it yet, and I had it on my person because I didn't want to leave it in the cell block when we go outside or anything because I thought it was too

important to leave laying around for somebody to get a hold of because there had been things that, one, an ashtray and a couple books had been missing from my cell before, and that's the reason I always carried it with me; and on Sunday, July 5 I was in the yard with three or four other men and they came and took us inside the Custody Office here and they took off my person a letter to the Governor with his address and the Chief Justice's address on it, and after they seen who it was addressed to, I asked for it back. They refused. I asked again and they still refused me and told me to get to my cell.

Monday they had me under the Custody Office and they had me write a paragraph or two from the front of a dictionary.

Monday evening I wrote another letter to the Governor. I dated it, dated the time I wrote it and the officer that came by my cell picked it up at 10:15 on Monday evening of July 6. Since that time I was out in the yard yesterday, they called me in, took me into the Associate Warden's office, one Lt. Benson, and in this office they took me to was William Randall. I told Lt. Benson that he was not on my visiting list and I didn't want to talk to him. He ordered me to sit down and listen to what the man had to say, which I did. I listened to what he said, and I kept repeating to him all I wanted to do was tell the truth and the whole truth had to come out about this matter. He asked me several questions.

He asked me if he had doublecrossed me some way, and I told him the truth had to come out and there were some other things there but I don't remember everything but anyway as I got up to leave I opened the door and he says, "Are you in your menopause or are you having a change of life or something?" And I walked out and that was the last words I had with William Randall.

And since that time I have—I haven't heard anything in regards to my letter that they have and I would like to have it back. I don't know how to go about it. I wrote the Governor and told him that they had my letter, I told him under the circumstances it was taken, but as yet I haven't heard anything. I don't know what to do.

Q. Are the contents of the letter that you had to give up truthful?

A. Yes, sir.

Q. You say yes, sir, or no, sir?

A. Yes, sir.

Q. This letter is approximately ten or eleven pages long?

A. Approximately 10 pages and I hadn't finished it.

Q. What is in the ten or eleven pages, whatever it happens to be, is factual?

A. Yes. It's pertaining to the Carol Thompson case in which I related to the Governor in my letter Monday evening, July 6th.

Q. And in the second letter that you wrote to the Governor I gather you are asking for this first letter back?

A. Yes, sir.

Q. So you can complete it and send it to him?

A. Yes, sir.

Q. You want the Governor to see the first letter that you are talking about, I gather?

A. I would like to finish it.

Q. And then have him see it, is that right?

A. Yes, sir.

Q. Is there anything in this factual statement of yours, this uncompleted letter, that is any different than you testified to in either of the two trials here in Minnesota?

A. Yes, sir. Completely different.

Q. Can you tell me not only—well—can you tell me how the contents of that letter differs from your testimony?

A. It completely exonerates Mr. Thompson and Mr. Mastrian in this matter.

Q. Both of them?

A. Yes, sir.

Q. Had you ever met Thompson prior to the time that you were actually testifying in Court?

A. No. I had never seen him until the day I seen him in court in Minneapolis.

Q. You have never talked to him?

A. Never talked to him, and I might add I have never talked to him since.

Q. How about Mastrian, how long—do you know him at all?

A. The only, I never did know him, but the first time I ever seen him in person was in court when we went to court there in St. Paul I believe it was in May sometime.

Q. This was May of 1963?

A. Yes, sir.

Q. Roughly a year ago, in other words?

A. Yes, sir.

Q. Were you actually in the Thompson home at the time that Carol died?

A. Yes, sir.

Q. Who was with you?

A. I was completely by himself but Mr. Morris in this case had burglarized the home at one time before.

Q. How long before?

A. In December of '62. And I had known Morris since September, either September or October of '62, and he relayed information to me concerning the Thompson home.

Q. How did you get to the house?

A. I got there in a car I had borrowed from a roommate of mine.

Q. Had you got to the house in the same manner that you testified to at the trial?

A. Yes, sir.

Q. Nobody drove with you or was with you in that car?

A. No, sir.

Q. Nobody was waiting for you afterwards?

A. No, sir.

Q. What was the purpose of your going into that house?

A. For money, to burglarize it.

Q. What made you think there was money in the house?

A. Because the rumor had had it which gets through to the burglars and so forth when people carry large amounts of money, it had been rumored Thompson had carried money on him for quite some time, and a burglar's way of thinking, when a person carries large amounts of money and known to flash it, that they also have it at home. And that is one reason why Morris went there, but he wasn't too successful. He got about $500 he told me, but he thought there was more money in the house, but there was nobody there at the time he burglarized it and so that was my idea was to go in there when somebody was there and then I could find out where the money was. I thought the best time would be, to do that, would be after the kids and Mr. Thompson had left.

This information I had on the Thompson house was given to me by Morris which in turn had got it from Mastrian and without Mastrian knowing about it because he had been living with Mastrian and some five or six months altogether, he was in the process of getting a divorce from his wife and that's the reason he was staying at Masterian's home, and he had

a lot of contact with Mastrian. He knew quite a bit about as far as Mastrian's business went, but he got this information through Mastrian and without Mastrian being aware of it.

Q. He used this information in the December, 1962 burglary of the Thompson home?

A. Yes, sir.

Q. Mastrian tell you how he got into that home?

A. Morris.

Q. Or Morris, excuse me. Morris tell you how he got in the home?

A. Morris says the door was open when he got into it and he said it was a habit of them to leave the doors open.

Q. How did you know that the Thompson children had left the house on March 6th?

A. Because I heard them. I could hear them from downstairs when they left.

Q. What time did you get into the house?

A. It was 6:00 or shortly after.

Q. At that time, as far as you knew, nobody was up and around?

A. No, sir. Like I testified before, I went by the house and there was no lights on or anything else when I went into it. I went in the basement.

Q. And after you heard the children and Mr. Thompson leave that's when you went upstairs?

A. Yes, sir. I went upstairs, and I might add I carried the hose with me because it was my information that they had some type of a dog there, and I carried that hose for the purpose of knocking the dog out and then if I had trouble with Mrs. Thompson to tell me where the money was I thought I might whack her a couple of times.

Q. But your intention then was to rob the Thompson home in the presence of Mrs. Thompson?

A. Yes, sir. I had a handkerchief I used as a mask to cover my face.

Q. Where did you get the hose?

A. The hose I found downstairs in the basement in the apartment where I was living in.

Q. Where downstairs in the apartment you were living in?

A. There was a laundry room there, and then there is, they have individual lockers for each of the apartments and whoever had had the apartment prior to me, it doesn't necessarily mean that the, where you can keep your suitcases and stuff downstairs in the basement belongs to the previous people that had the apartment before it had been rented, but the hose was in this basement in this place where you keep your suitcases and things that you don't use all the time.

Q. Was it in the condition that you took it with you, or did you have to cut off a piece of hose or what?

A. Well, I had to shorten the hose some because it was too long and too bulky and the other part I threw away into the incinerator.

Q. At your apartment?

A. Yes.

Q. Now, what is the address of the apartment you are talking about relative to this hose?

A. 2870 Humboldt Avenue South, Apartment 9, Humboldt Avenue South in Minneapolis.

Q. That's Minneapolis?

A. Yes, sir.

Q. During the time that you were in custody were you ever taken out of the jail?

A. Yes, sir. Many times.

Q. Were you taken out to any place for dinner?

A. Yes, sir.

Q. Pardon me?

A. Yes, sir. After the Thompson trial I was taken to Lee's Restaurant with the detectives when we came back from the Thompson trial; and after the Mastrian trial I rode back in the car, Mr. Thompson's car with Mr. Thompson, with Mr. Maxwell, with Mr. George Webber the Chief Deputy at the County Jail in St. Paul, and we stopped at Hinckley, it's the main restaurant in Hinckley. I don't remember the name of it but we had steak there.

Q. Which Thompson is this that you are talking about? You say Thompson's car on the way back?

A. No. I said Randall's car.

Q. Oh, Randall's car.

A. Yes, sir.

Q. Was Mr. Randall with you?

A. Yes, sir.

Q. Have you ever had dinner at the White House Restaurant during the time that you were in custody?

A. I was in the White House Restaurant, but we didn't have dinner there.

Q. You didn't have what?

A. Didn't have dinner there.

Q. Did you have a drink?

A. No, sir. We didn't.

Q. What were you doing in the White House Restaurant?

A. Well, we were out to get some information concerning the case.

Q. Who were you with?

A. Vern Phillips.

Q. Who did you talk to at the White House?

A. I didn't talk to anybody there but Phillips talked to the cashier or hostess.

Q. Did he talk to anybody else?

A. Just the door boy, I guess. There was nothing there pertaining to this case that we found out or anything.

Q. How did you happen to go to the White House as distinquished from some other place?

A. Would you repeat that question?

Q. How did you happen to go to the White House as distinguished from some other place?

A. We had information that the fellow might be in there but he wasn't there.

Q. What fellow is that?

A. I don't recall the name right now, and as I say, it's not pertaining to this case so much now.

Q. Phillips was investigating some other case? Would you rather not answer?

A. Yes.

Q. You would rather not?

A. Yes.

Q. What was your reason for involving Thompson in this case both in your testimony in court and in the statements to officials?

A. Would you like me to start at the beginning?

Q. Yes, please.

A. Well, you might say the idea was conceived through the newspapers and through the t.v.

Q. Were you aware of Mr. Thompson's insurance through the newspaper?

A. Yes, sir. That was it. It was Mr. Thompson's insurance and right after her death the papers quoted that he wasn't

talking to the police and everything so the idea of blackmail came to me with all this and throughout the time when the police first started questioning me at Phoenix and back at St. Paul they never seemed to be interested in how or why it happened. It always seemed that they were interested in Thompson and Mastrian and always asking questions of "How much you received for the job," and "How you were contacted," and such.

When I first conceived the idea and everything I had talked to Sharp, Butler and Ingram before, we all had been on different deals together.

Q. Burglaries?

A. Pardon?

Q. Burglaries?

A. Yes, sir. And they knew I had talked to Morris about burglarizing the Thompson's residence. When the papers came out with the Thompson's name and Mrs. Thompson had been murdered, I was scared these other people were going to talk so I went and got in contact with Sharp and been down to his apartment, and Ingram and Butler had been there and were there when I was there, and we were drinking, so at the time I wanted to scare them. I was scared they would talk to the police if they got picked up or anything so I told them I had killed her for money. There's a lot of different things there involved along the way.

When I was in custody in Phoenix I had a chance to talk to Mr. Sharp at first without the police being aware because the different tanks we were in were close together and one end and one cell a person could yell into the other tank and they could hear you and we could talk back and forth and at another time when I was in Phoenix, this can be verified that the police there made a mistake and put Sharp in the same

tank with me so that we had a chance to talk, and in the meantime I had known that Ingram and Butler had been picked up on a stick-up in St. Paul and they were in custody in the County Jail and knew that Mastrian had been picked up and Morris.

I told Sharp if, when he got back there, if he could get word to the rest of them as far as the hired killings, some of my plans to go ahead and tell them and as luck would have it, when they went back to the—when they took Sharp back to St. Paul they locked him up with Butler, Sharp—well, and Ingram and Morris, so all four of them were together.

Now, in the meantime I had called an attorney, a Marvin Johnson in Phoenix and told him I had killed Mrs. Thompson and gave him the story that I testified to and said that if he went up and seen Mr. Thompson that he could probably get money to defend me, and I thought being that it was a burglary that it happened in, the killing, that there was no way they could convict me of first degree murder because it didn't happen that way, and with a good attorney I wasn't afraid.

Mr. Johnson flew up and seen Mr. Thompson and came back to Phoenix and told me that Mr. Thompson would have nothing to do with him and wouldn't come up with any money for my defense. So I signed the extradition papers and went back, and when I was questioned down there I more or less hinted to the police that questioned me—

Q. Where?

A. In Phoenix. Mr. McMullin and Mr. Burdine, I knew quite a bit about the Thompson case and I kind of led them to believe it was a hired killing.

Q. Hired by Thompson?

A. Yes, sir. When I got back to St. Paul they put me in a cell there by myself and I was questioned from time to time and the night before the Grand Jury was to meet, I don't exact-

ly remember the date, Randall asked me over to his office the evening before.

There were detectives there also present, and he informed me of my right to go before this Grand Jury and also said I didn't have to go, and then he explained the difference between third degree murder, second degree and first degree.

Then they took me back to my cell.

I learned later that Morris had testified, the indictments were brought down for first degree murder against me and against Mastrian. At the time I talked to Sharp in Phoenix, I told him that to inform the others too that with the stick-up charges and everything that they had against him that they could probably make some kind of a deal with the prosecutor to—I am trying to think about all these things as they happened in rotation and it's been quite some time ago and they all aren't going to come out just exactly like they happened.

In the meantime Marvin Johnson had flew up again to see me, and he couldn't get anyplace as far as money goes.

Q. Couldn't get anyplace with who as far as money goes?

A. Mr. Thompson. But he talked to Randall, and he informed me that there might be some deal made if I cooperated. Johnson went back to Phoenix and the last time I had words with him I called him long distance, and he had told me before too that as far as money goes that he had to have money and he wanted forty or fifty thousand dollars to handle my case, but the last time called him, and they explained it before to me, that he needed money and had to have money, and I didn't have any.

So I had—I wound up with the Public Defender, Tom Moore, and the date when we went to get arraigned, I was waiting in the bull pen to go into court and who did they put in with me but Morris. So Morris had a chance to inform me

of what type of statements that the rest of them had made and his statement to the Grand Jury. The bailiff is who brought Morris into the bull pen. Then after a while Phillips came charging in and he says, "What in the hell are you doing in here, Morris, you are not supposed to be in here," and he acted like it was a mistake, which I don't know to this day if it was a mistake or not.

Later on that afternoon back in my cell Lt. Barkley came to see me and he said Morris wanted to talk to me and he asked me if I would talk with him. He said they would take us and put us over in the Grand Jury room together where I could be sure that the place was not bugged so that we could talk. I said I would talk to Morris.

So they took us over there in the afternoon, this was on June 19, on a Wednesday, if I remember right, correctly, 1963.

Morris informed me at the time, and I don't know if the information came directly from Randall, but I was led to believe it did, if I cooperated and told him about Mastrian and Morris—Mastrian and Thompson, I'm sorry—that they would see to it that my murder charge would be reduced to second and I wouldn't do probably more than five years and they would get me out, Randall. We had a chance to talk and the left us in there for about an hour and a half so we had plenty of time to get our stories straight, and then they took us out and put Morris back in with the rest of them and took me back to my cell.

Q. What do you mean by the rest of them?

A. Sharp, Ingram and Butler. They told me that they had TV upstairs, one whole cell block to themselves and with nobody else in there, that they didn't put anybody else in with them and they practically had the run of the place.

On the way back, Lt. Barkley asked me if I had anything to say to him concerning Mr. Thompson and Mastrian and I said no, I wanted to talk to Tom Moore first.

I talked to Tom Moore the next day and he agreed that it was a good deal if we could swing a second degree murder charge, but he says that we wanted to get this confirmed so there was a meeting set up for four o'clock that day with Mr. Randall.

They came and took me over to the Grand Jury room. When I got there Mr. Barkley was there, Larry McMullin was there and Tom Moore, and there was a tape recording sitting on the desk. A few minutes later Mr. Randall came in. He knew why we were there, and he started to talk, but he couldn't confirm anything as far as second degree goes so Moore wrote on a piece of paper to me and said, "Say nothing."

So finally we got up with nothing accomplished but Randall talking to the recording machine. By this time it was close to five o'clock and they took me back and I had supper at the County Jail which was at five and I no sooner finished supper than I was called out again, McMullin, Phillips and Barkley was there, and they all had an argument, they knew I was ready to make a statement if I could get the second degree confirmed from Randall. They had a big argument, and they were all mad at Randall because he wouldn't confirm anything, and they wanted to get a statement so that they could get out and make a pinch.

So finally they asked me if I wanted to talk to Randall, and I said I would talk to him. So they went and called Randall, and then they took me over to the Sheriff's Office. They were all present, and the Chief of Police of St. Paul, McAuliffe I guess his name is, he was there. They sent out for sandwiches and finally Mr. Randall showed up. They put us in a room

more or less by ourselves where nobody else was around and Mr. Randall talked to me. We went through the murder charges. He re-explained the murder charges to me. He pointed out a man by the name of Redenbaugh that had killed somebody's wife, a paid killing in 1919 or sometime in there, relating that how much time he had done; he talked about Schaefer and Young and then he brought up the Tony Devito case, explained about DeGood, pointed out what he had done for DeGood, that DeGood hadn't done a day in prison how he had kept him down to Hastings in the second floor down there, had radios, all the food, everything he wanted, and he explained to me and first degree murder that the Parole Board doesn't have any jurisdiction over first degree murderers, that only the Pardon Board, composed of the Chief Justice, the Attorney General and the Governor; he told me in '66 that he was going to run for Governor or the Attorney General. He said he hadn't made up his mind yet, but in conversation since then and everything that I think he prefers the job of Attorney General. I am not sure. And he said he was going to have one of the offices in '66, and he pointed out where he would be in a position to help me and the people that he knew.

Well, I gave him a rough story, a false story of what had happened, and he told me that this is all well and good, he says, with your testimony, that we can undoubtedly get a conviction, and he pointed out to me Mr. Swoboda, and the money that he had and the people he knew and had influence, and he said he didn't want Mr. Swoboda backing Mr. Thompson. So this is where the story came in about that future contract that I testified to in the Thompson trial as far as that future contract on Mr. Swoboda.

Q. Was this your idea that testimony relative to Mr. Swoboda?

A. No. This was Mr. Randall's as far as Mr. Swoboda is concerned.

Q. Go ahead?

A. Do you mind if we take a break for a second?

Q. No. What do you have to sign here, do you want to get away for a few minutes, is that what you want to do, this subject matter?

A. Yes. I would like a break.

Q. Yes. What have they assigned you to here in the prison?

A. Twine.

Q. On one of the machines?

A. Yes. *On the ballers, balers* I guess what you would call it, it's—they wind on a spindle.

Q. How long have you been on that?

A. Since last Thursday afternoon.

Q. Is this your first job assignment then, I gather?

A. Yes.

Q. Is the food okay?

A. Not bad.

Q. Where have they got you housed?

A. In B house.

Q. Are you at the point now where you can see the movies and so forth, or haven't you gone that far yet or haven't been here that long?

A. Yes.

Q. I don't know what the rules are, how long you have to be here.

A. I have seen movies already and everything.

Q. That is, you are part of the population now then?

A. Yes. I am part of the population.

Q. Is it two weeks they send you through classification and all that sort of stuff or what?

A. Yes. Where they are all done with their classification now and everything. I mean this is my steady job assignment.

Q. You used to sell roofing and siding, didn't you?

A. Yes, sir.

Q. Did you used to work with a fellow by the name of Edelstein?

A. Yes.

Q. Or at least one of the people you worked with?

A. I worked with quite a few people.

Q. What company was that anyway?

A. Pardon?

Q. What company was that?

A. Harris Construction Company.

Q. Been with them for quite awhile?

A. Off and on since '59.

Q. That's quite awhile. I was one of the lawyers on the Northwest Homes case which involved roofing and siding, home improvement. I learned a little bit about the business anyway, in the process of it in those many weeks.

You want to go back on and keep going, or do you want to chit-chat for awhile longer? We got all day.

A. All day?

Q. Yes.

A. Okay.

Q. I talked to Mr. Farnham and he said that in order for you to get something to eat you would have to leave here about 11:30 or quarter to 12:00, closer to quarter to 12:00 to make sure you get your lunch.

A. What time is it now?

Q. It's 20 after 11:00. Then after that time at 12:30 or quarter to 1:00 you would have a chance to eat and so forth. I gather it's pretty hard to get a meal around here unless you are there?

A. You got to be on time. Very important.

Q. Are you originally from Minneapolis?

A. No. Michigan.

Q. Whereabouts in Michigan?

A. I was born in a small little town of about 200 people.

Q. You still have some family down there?

A. They are still back there.

Q. Mom and dad?

A. Yes. Mother and dad are still there.

Q. Brothers or sisters in the area or what?

A. No. Not there.

Q. I gather you are not playing ball here or anything like that?

A. No. Not yet. All in all you might say the population haven't received me as a most popular fellow around.

Q. It takes time, takes time. When did you come to Minnesota?

A. '59.

Q. '59. They let you hear the All-Star game yesterday or did they make you work?

A. Yes. No, we have—they are very good about it all as far as the game and the World Series. They give us that afternoon off.

Q. Oh.

A. We don't have to work.

Q. You hear it on radio or set you in a big room with television?

A. No. We each go to our own room and we have earphones and everything we can hear down and after the game we went to the yard and took suppertime, more or less.

Q. Chat about the ball game?

A. Yes.

Q. I thought the American League had that won. When I left they were ahead 4 to 3 and almost over. She really blew up.

They do the same for the World Series, you have off for a whole day?

A. Yes. That's what I understand from the other inmates.

Q. That's a good deal. A little something anyway.

A. Yes.

Q. What time do you have dinner at night anyway?

A. Oh, approximately five o'clock.

Q. Right around five. Did you get yourself a new haircut when you came up?

A. Yes. I told them they might as well chop it off because I would be here for quite sometime.

Q. It's easier to take care of anyway.

A. Yes. You don't have to go through the expense of the hair oil and everything and I have much more money for something else.

Q. That's right. You do get so much a day, don't you, for working?

A. Yes. I guess I am making a fabulous sum of 45 or 50 cents.

Q. That keeps you in cigarettes, though, doesn't it?

A. Right.

Q. It's not like the roofing and siding business?

A. No. Not by a long ways.

Q. That's good one, real good. Well, let's go back to work. As I recollect it, when you were talking about the matter at hand, you were talking with Mr. Randall and he was explaining the various degrees of murder and what his personal ambitions were for the future and something about Mr. De Good and how he was treated and so forth. So you are still with Mr.

Randall and the sequence of the facts as you are relating them now.

Do you recall how the conversation with Mr. Randall wound up?

A. Well, it wound up that he confirmed what was told me by Mr. Morris and he was always, he pointed out, how this could come about.

Q. What was this specifically?

A. As far as the second degree murder is, and that I would not do more than five years at the very most. So at the time I was thinking this was still better than a burglary charge and a murder committed during a burglary under the old laws so I told him I would give a statement, and then we went back out and he told Barkley that I was ready to give a statement, and Mc Mullin, and they called the stenographer in, or the court reporter, I don't know which it was, but anyway we went into the Sheriff's Office then and I gave a statement I think you can confirm through the detectives and whoever took the statement that I was quite nervous. I hesitated a lot and I asked for quite a few breaks.

Q. Did you tell the story then basically that you told on the witness stand twice?

A. Yes.

Q. And told them the same story you told your attorney down in Phoenix?

A. Yes.

Q. And told the same basic story that you had told your attorney, Tom Moore?

A. Yes.

Q. Is this the first time other than the letter to the Governor in which you have told this version of what happened?

A. Yes. This is the first time that the true version has come out.

Q. Did you tell Mr. Mc Mullin on the way back here from Phoenix something to the effect that you would give him Thompson, you know, something to this effect?

A. Yes.

Q. And this was the result of your reading newspapers as to the fact that he apparently wasn't talking to the police and as to his financial condition relative to insurance, is that right?

A. Yes.

Q. Now, you mentioned the fact that you intended to blackmail him, did you mean blackmail him for attorney's fees or blackmail him stating that you would implicate him unless he would give you money?

A. That was my thought afterwards also.

Q. In other words, you were going to blackmail him for attorney fees as well as for otherwise?

A. Yes. Because I figured I could beat the murder charge and I would be on the loose.

Q. How did you expect to beat the murder charge?

A. Well, because it didn't happen the way I told it.

Q. Who paid your attorney from Phoenix?

A. I believe that would be more or less private and he didn't get hardly any money as the way it was for his trips and so forth up here.

Q. Was he paid any money by Thompson?

A. No, sir. Not a cent.

Q. Do you know whether or not the figure of about $1500 is approximately what he got paid in total for his conference with you and for coming up here?

A. Yes, sir.

Q. And so forth. This reasonably accurate?

A. Yes.

Q. It was something in that vicinity at least you are sure of that?

A. Yes, sir.

Q. I gather you did not pay this personally?

A. No, sir.

Q. It was paid on your behalf?

A. Yes, sir.

Q. And it was paid by people that are completely unconnected with this case, isn't that correct?

A. Have nothing to do whatsoever.

Q. All right.

A. At that time they fully believed in my innocence.

Q. Have you ever talked to anybody from any of the insurance companies?

A. No. But this, another discussion that I had with Randall.

Q. When?

A. Before I gave the statement. And he would ask me what kind of a life I had lived in Michigan before I come over here and asked me if I had any arrests or anything, and I told him no. He says that's good then because he was going to have an investigation made of my background and that would help him and give him an excuse as far as politically and, in getting me loose, and so later on I found out since that the insurance companies are the ones that paid the tab for the investigation from July until we received the report in October.

Q. Investigation of this case?

A. Investigation in my background in Michigan. I have read this report and it consists of 57 pages.

Q. Do you know whether or not—excuse me?

A. And—

Q. Excuse me, go ahead.

A. And I understand that the fellow that did the investigating was from Chicago from, connected with one of the insurance companies, and I believe his name is Keely or something along that line, I don't know his name exactly.

Now, I might add while it's on my mind, after the Thompson case in January, Mr. Randall bought me a pair of shoes, and I don't know the exact store they come from, but this can be confirmed through Captain Olson because he let this man into the County Jail to measure my feet and then he went back out and brought several, well, two different pairs of shoes that would fit me, and I picked out one and I asked him what the price was and they were $21.50 and Mr. Randall paid for those.

Q. Has anybody from an insurance company either directly or indirectly promised you any money or any assistance at all?

A. No. I never had a chance to talk to any insurance men.

Q. You haven't talked to any attorneys in regard to this from insurance companies?

A. Oh, I had Mr. Moore, Tom Moore, I had him, I told him to contact the insurance companies and see if—how much money I could get if I could save them the price of the premium that they would have to pay Mr. Thompson, and you can talk with Mr. Moore and find out about this and who he contacted on it, but he came back with the information to me that the insurance company wouldn't do it because it would be like paid testimony.

Q. In view of the fact that you thought at least that you were going to be permitted to plead guilty to second degree, why did you plead guilty to first degree murder, what's the background on that?

A. Well, about two months after the Mastrian case, Mr. Randall called me into his office and I had been there before for coffee and sweet rolls and cookies and all that stuff, and cake whenever I went up to his office, I always had that. I don't know how many times I was up to his office, it would be hard to say, numberless you know, the times I've been up there. Anyway, he did call me up there approximately, say two months, it might be a little less, after the Mastrian case was finished, and he informed me that he had talked to all the judges and none of them would accept a second degree murder plea. They wouldn't go along with him. So he pointed out to me that with the attorneys hollering from Thompson and especially in Mastrian's case, favoritism and promises were kept to the other men so far that had been released, that if I would plead guilty to first degree murder this would stop all this in the appeal and that if I would do that then he said within approximately 6 or 8 years as time went by he was going to be in a position from '66 on he was either going to have one or the other offices, Attorney General or the Governor, and he pointed out to me also that a survey had been taken in the state and I believe he quoted the figures to me that one out of every ten people knew his name and that he didn't have any doubt as far as being elected and pointed out that this case had put him over there, the people had, his name had been before the public every day in the paper practically since this case happened until it was finished; and that he would see if I went along with this first degree that I would get a full pardon, not a commuted sentence, and I would be all done, finished, I wouldn't have any time to finish, spend on parole like I would have on the second degree charge.

Q. All right. Has anybody in this prison, whether they are prison personnel, visitors or people that are confined here in

any way asked you to make a statement like this or told you to make a statement like this?

A. No, sir. Nobody was aware of it until they took the letter off from me.

Q. This is your own idea then?

A. Yes, sir.

Q. Have you talked to anybody about doing this?

A. Well, as far as myself is concerned and everything backfired, nothing worked out and it came to my mind that Randall wouldn't be able to keep his promise as far as the pardon goes because as far as time spent here, as far as hired killers go, and everything, I don't think it could come about and not only that, to clear my conscience and everything of the whole thing and be done with it and get it off my mind and the injustice that I have done to Mr. Thompson and the way I have torn him down and Mastrian also.

Q. All right. Why don't we take a break here. You have to get out there in order to get some food.

Now, do you eat and you go back into the cell block?

A. Yes.

Q. 12:30 or something like that?

A. Probably be 12:10 or so. How about—

Q. What time, in other words, I don't want to come back here so that I am hurrying you. I gather you want to go back into the cell and wash your hands and so forth?

A. Wash up everything, why don't you come back about 1:00 o'clock.

Q. All right. This is fine. I don't want to interfere with—you got to eat and so forth. So, all right.

A. If you inform them then that at 1:00 o'clock you are going to be here for me then they won't send me out to work because I just have to change clothes and everything and come right in.

Q. Right. Now, you can do what you want. I don't represent you and this sort of thing, but I would suggest that since you say this is a true statement that you not discuss this matter until you have completed it and told the entire story and obviously there are some things that we haven't been able to get to this morning, but this is entirely up to you.

A. I am quite concerned with this letter that they have of mine and think it should be given back to me and also I am quite concerned as far as the Ramsey County, they are going to be sending police down here to harass me now when this is made public and I was wondering if there couldn't be—I know in the County jail that Mr. Moore told me that a court order could be gotten at that time so the police wouldn't bother me.

I was wondering if that could be possible now?

Q. Well, this is something that we can discuss after you have been to lunch. I really can't give you a flat answer on something like that but I do suggest that during the next hour and fifteen minutes anyway you do not discuss this with anybody. I can't you can do it if you want to, I think you would be foolish to do so as long as you say this is a true statement. All right?

A. Right.

(Whereupon an adjournment was taken for lunch.)

July 8, 1964
1:20 o'clock p.m.

(All were present as heretofore noted.)

Dick W. C. Anderson: I would like to bring something else out as I remember here and like I said this happened quite awhile ago. At the Mastrian trial after I testified and then the defense started, the State got quite concerned with the witnesses that Cochran had. I knew each and every man that tes-

tified there and the State wanted another witness who kind of cinched the prosecution and so they let Sharp, Ingram and Butler and Morris and myself altogether down in the small County Jail to see what we could come up with as far as ideas and we had free use as far as the telephones go and everything, and I might add at this point also that any time I was over in Randall's office and wanted to call out I was free to use the telephones.

We got together and they were quite concerned because Mastrian's neighbor, the person that testified, and this babysitter testified his whereabouts when I said he was with me casing the Thompson residence, and also about this phone call I had said that he made. So Morris came up with the idea of this girl he knew, Margaret Johnson, the one Cochran called the sneaky Pete witness at the trial. Margaret Johnson works as a secretary, true, but she is also a prostitute. Morris had knew her for some time and knew about her and had gotten her in trouble and a friend of hers had aborted so Morris told this to Randall and said he would like to talk to her and that he could get her to say that she knew Mastrian. I don't know whether she did or not, and that she had made a telephone call for him. So when we were sitting over in Randall's office, this is after we had all got together in the County Jail, Randall called the police in Minneapolis and I believe you will find a report down there on this Margaret Johnson as far as a prostitute goes. Anyway, one of the detectives found out where she was staying at now and where she had moved to. She had moved to a different address and told her to be at such-an-such a place that they were going to come over to see her. So they took Morris, Phillips took Morris over there and they brought her back to St. Paul. I believe this was the night before she testified in Duluth. They brought her back and Morris

talked with her for about an hour in the Grand Jury room by himself and told her what needed to be said and everything.

She then came out. I wasn't there at the time but this was what happened, and said that she would testify for the State, she told them. So the State in turn took her up there and she did testify to the fact that Mastrian had her make a telephone call to a guy named Dick.

By Mr. Jones:

Q. How did you find this out?

A. This idea was conceived by us when they let us all together.

Q. You mean what happened after you all got together and talked about this thing?

A. Because I talked to Morris later.

Q. Morris was the one that revealed this to you then?

A. Yes.

Q. Morris tell you whether or not this girl's story was true?

A. No. It was fabricated as far as Mastrian making the telephone call to me.

Q. You never did receive that kind of a call from the girl and so forth?

A. No.

Q. You never did receive a call from Mastrian?

A. No.

Q. This was all cooked up then?

A. Right.

Q. Among the four of you?

A. And I might add while we are on the subject of Morris, that he relayed to me before when he had been living with Mastrian, that Mastrian had been questioned as far as the

Eddie James murder went, and he was somewhat known as far as a police character and everything.

Q. Morris told you this?

A. Yes. This is before the burglary and everything.

Q. Why did you tell Sharp and Ingram and Butler that this was a robbery situation or money situation, this was before you were picked up I am talking about?

A. Well, because I was scared that they might say someing if they were picked up in any way and I thought with them thinking that was I hired to kill her that I wouldn't think nothing about killing them and they would be scared to talk.

Q. That's the reason you told this to Sharp?

A. Originally.

Q. And Ingram and Butler?

A. Originally.

Q. Right?

A. Right. After the murder before the insurance money and stuff came out, because they could put two and two together when the wife comes up murdered.

Q. Yes.

A. From the papers.

Q. This was to scare them a little bit then?

A. Right. Throw the fear of God into them.

Q. As I understand it, you talked to Sharp in Phoenix and had him relay to Ingram, Butler and Morris the over-all story then, is that right?

A. Right.

Q. And later on you and Morris got together and had a chance to talk for quite awhile together and straightened the details out?

A. Straightened the details out as far as in the Grand Jury room and also in the bull pen before I was arraigned.

Q. Now, is what you told us this morning and this few minutes here this afternoon the same basic idea as to what you wrote in that letter to the Governor and the Chief Justice?

A. Yes, but I have not finished it all.

Q. I gather you have given us more detail?

A. Yes.

Q. Than you had written?

A. Yes.

Q. But the basic idea is the same?

A. Yes.

Q. And the letter you wrote to the Governor is correct?

A. Right.

Q. And this is correct?

A. Right. I might add also as far as visiting the County Jail when Morris' wife would come and the kids would come, he wouldn't have to visit them there at the County Jail, he was taken over to the Sheriff's Office or somewhere else where he could visit with his family or any relatives that came to visit him right in the jail where we visited would be his dad, sometimes he went over to the Sheriff's Office, he went over there to visit him.

Q. I gather what you are saying is that Sharp told the story so that he could make a deal on his trouble?

A. His troubles and everything because his troubles had been mounting. He had been questioned a week or two prior to this as far as burglarizing. They were getting warm on him in Minneapolis.

Q. And Ingram the same way?

A. Right. We all worked together from time to time.

Q. And Butler the same way?

A. Right.

Q. That's the reason each of these three told this story?

A. Because they were under fire.

Q. Do you know whether or not any of the three of them knew what the disposition of their cases was going to be before they testified?

A. Yes, sir.

Q. Did each of them know what was going to happen in their cases before they testified?

A. They were all promised to get off without any jail time.

Q. That's Sharp, Ingram and Butler?

A. And Morris.

Q. Morris also?

A. Morris also.

Q. And this was before any of the four of them testified?

A. Right. And, oh, two or three days before Morris went down to see the judge to plead guilty he told me exactly what was going to happen, what his sentence would be, he knew in advance.

Q. Tell me what happened after you got inside the Thompson house?

A. Well, I heard a noise upstairs as I said before already in the other two trials, and then my statement I gave the police, but I waited, I wasn't quite sure whether all the kids were out of the home or not, that's why I waited until 8:30, and in the meantime the telephone had rung and she had come downstairs and when she had come downstairs and hadn't talked to anybody, only on the telephone, I was sure she was by herself and all the children had left.

Q. Was there any pre-arranged signal of somebody to call at 8:30 to let you know that the house was clear?

A. No. That was all pure fabrication after I had been there. I heard the telephone ring. I knew there had been a call, from whom, I didn't know.

Q. That's where you got the idea to come up with this story about the fact that the 8:30 call was a pre-arranged deal?

A. Yes, sir.

Q. What happened after the telephone rang and you heard somebody come down the stairs?

A. Well, after she came down and then I heard her go back up the stairs, I came up from downstairs and went up the stairs and she was about ready to climb in the bath tub when I got there.

Q. She was in the bath room herself?

A. No. There was—she had her bathrobe off. She might have just gotten out of the bath tub or she was wet, her hair was wet, and right away she screamed.

Q. Where was she?

A. In the bath room.

Q. That's where you first saw her?

A. That's where I first—first time I laid eyes on Mrs. Thompson.

Q. Well, then what happened?

A. At the time I had the handkerchief over my face and she screamed and started to holler, that's when I hit her with the hose and I knocked her out, and so I took her from the bath room into the bedroom, and laid her down and I started going, she was still out, so I started going through the dresser drawers and everything and I found only $125 in the drawer, and when she came to she got up and started screaming again, and she grabbed a mop and starting to hit at me and so I hit her again but this time with the gun and at the time, I don't know she was fighting me, and I must have lost my head and I started, went crazy or something, because I started to hit her real hard with the gun butt and she started to bleed. She went

down and she got up and she got tired running and she ran downstairs and I caught her at the door and if I hadn't have locked the night latch on the front door when I had come up from the basement, the chain lock on it, she would have gotten out. I hit her again down there a few times. I don't know how many times, and she went out again, and I don't know why, but I went to the kitchen and got the knife and knew she was suffering and I thought I could put her out of her misery, I guess, I don't know, but anyway I killed her or thought I had, and when she had been out before I had taken the ring off from her and then in the scramble downstairs I had dropped it, and I had tried the gun downstairs and it wouldn't work, and then I went upstairs to wash up and that's when I heard the door slam downstairs, and I ran down to see what it was all about and she was gone and that's when I went out the front door.

Q. You went out the front door?

A. Yes.

Q. Was the front door unlatched at the time that you went out?

A. No. I had to unlatch it.

Q. Was it hooked at the time that you went out, the night latch on the door or whatever you call it, night chain?

A. I had put it on when I come up from the basement so in case anybody came I thought they would probably come by the front door and that they wouldn't come in.

Q. What about the back door, did you do anything about the back door?

A. No. I had forgotten to lock that on the way up.

Q. How was Mrs. Thompson dressed when you first saw her in the bath room?

A. Her hair was wet and she had her robe on.

Q. She had a robe on?

A. Yes.

Q. Do you recall seeing a night gown at all?

A. I think there was one in the bath room but I am not sure. Things started to happen pretty fast.

Q. Did you ever try to drown Mrs. Thompson or put her in the bathtub?

A. No.

Q. Was she ever in the bathtub at the time that you were in the house?

A. No. Not when I was in the house she wasn't.

Q. I mean while you were there with her is what I obviously mean?

A. No.

Q. So you didn't put her in the bathroom, you didn't find her in the bathroom?

A. No.

Q. You never took her out of the bathtub, not the bathroom, I mean?

A. No. She was already up with her robe on.

Q. Where did you get the gun that you used?

A. I bought it from Mr. Sharp about a week or two prior to the murder.

Q. Where did Sharp get it?

A. He had said in a burglary.

Q. How much did you pay for it?

A. $50.

Q. Did you hear Mr. Thompson or what you thought was Mr. Thompson say anything before he left the house?

A. I just heard his voice. I couldn't make out.

Q. Did you ever hear him make a statement to the effect that he didn't have time for coffee?

A. No.

Q. Why did you testify to that statement being made at these trials?

A. Well, I thought it would make it more look like he was in a hurry to get down there to make a telephone call back to the house.

Q. You dreamed this up yourself then?

A. Pardon?

Q. You thought this up yourself?

A. Yes.

Q. Is that right?

A. Yes.

Q. Where did you get the story about reverse artificial respiration and the bathtub story, the one you told, in other words, at the trials?

A. That is something I fabricated myself.

Q. Where did you hear about this reverse artificial respiration deal?

A. It is common knowledge, take all the air out and push the air out why the water is going to come in.

Q. What kind of a mop was she using in the bedroom that she was fighting with?

A. I think it was a dust mop. I am not sure.

Q. Do you know whether or not you dropped any bullets out of the gun while you were upstairs?

A. I don't know if I did or not. It could have been downstairs or it could have been upstairs.

Q. Did you strike her with the gun upstairs or try to strike her with the gun upstairs?

A. Yes. I struck her upstairs with the gun.

Q. Did you try to shoot the gun upstairs when you were fighting with her?

A. I don't believe I did first. I don't know. My mind snapped. I didn't know what I was doing.

Q. It's possible that you tried to fire the gun upstairs?

A. Could have been.

Q. But you know definitely that you tried to fire the gun downstairs, is that right?

A. Yes.

Q. Did you know anything about the telephone situation in the Thompson house prior to the time that you actually entered the house?

A. No.

Q. What's the name of this friend of yours who loaned you this car?

A. Alfred De Sano.

Q. Was he a roommate of yours?

A. Yes.

Q. Do you know where he went after this happened?

A. I believe he went to the office.

Q. Who did he work for?

A. Harris Construction Company, same place I did.

Q. As far as you know does he still work there?

A. Yes.

Q. Did he actually give you permission to use the car, I don't mean for this purpose, but did he actually give you permission to use the car that morning?

A. Yes.

Q. So he knew you had the car?

A. He knew I was going to use it that morning.

Q. Do you know where he got the car?

A. Through the company which leases it.

Q. They lease it to him or do they lease it to Harris Construction Company?

A. They lease it to Harris Construction Company.

Q. You talked to him since this happened?

A. No.

Q. Do you know why he wasn't called as a witness?

A. No, I don't.

Q. Anybody ever discuss with you the possibility of him testifying?

A. Actually I wanted to keep their names out of it as much as I could.

Q. By their names you mean his name?

A. Yes.

Q. I gather he is a good friend of yours?

A. Yes.

Q. How long has he lived with you?

A. I lived there with him since June of '6—June of '62 and known him for the last three years probably.

Q. You didn't want him to get involved in this, I gather, is that the idea?

A. No. He didn't have anything to do with it, why should he become involved with it.

Q. Did you know that was I going to come and talk to you today?

A. No.

Q. When is the first time that you knew somebody was here to see you today?

A. Well, when they said visit.

Q. Nobody told you yesterday that some attorney or somebody else wanted to see you prior to today, I mean other than this incident you are talking about Mr. Randall?

A. No.

Q. Is there some kind of a regulation here that you cannot have correspondence on your person outside of yourself in your own room?

A. Not that I know of.

Q. Do you know whether or not you are allowed to start to write a letter in your cell and then take it out into the yard?

A. I haven't read any regulations against it.

Q. Have you been advised about any violation that you supposedly made relative to the writing of that letter or the handling of that letter?

A. No.

Q. Do you know whether you have any violations on record here since you have been here in the prison?

A. Not to my knowledge I don't.

Q. You know, such as hitting another prisoner, not standing in line, smoking cigarettes when, you know, the usual?

A. No.

Q. Things of this kind?

A. No.

Q. As far as you know, you have made no violations whatsoever here?

A. No violations.

Q. You have not been advised of any violation in regard to this letter that is partially completed that we were talking about here?

A. They haven't discussed it with me since I yelled at him when I went out of here that I wanted my letter back to the Governor. And then they called me in Monday morning and had me copy this thing from the front of the dictionary and in my ownself I believe they was seeing if this was my handwriting.

Q. Was it your handwriting?

A. Yes, it was.

Q. You wrote this ten or eleven-page letter out yourself in longhand, in other words regular writing?

A. Regular writing. Yes. And it had the Governor's name and Chief Justice's name at the top of it.

Q. And the facts contained in there are your facts?

A. Right.

Q. Is that right?

A. Yes.

Q. Nobody has given you these facts or this information and told you to write this story then?

A. This is all my information and everything that was done and the idea that was conceived was mine from the start.

Q. Did you and Mr. McMullin become pretty good friends in the process of his investigation?

A. I led him to believe so.

Q. Do you think he will be somewhat hurt over the fact that you weren't telling him the truth but were leading him on?

A. I imagine. And I think that he would probably be one of them that would be down here to see me that Randall would send.

Q. He always treated you decently, didn't he?

A. Yes.

Q. I am talking about Larry Mc Mullin now?

A. Yes.

Q. Specifically. And the only reason that you told this fabrication is because you thought you could get a better deal out of it?

A. Better—

Q. After you realized there were going to be no attorney's fees or other compensation for you?

A. That's right.

Q. Prior to that time you did it for the purpose of getting your attorney's fees so that you could show that this was a

burglary proposition basically, burglary or robbery proposition and not a premeditated murder situation?

A. Right.

Q. And after that time you also thought it would be a good idea to tell this story so that you could attempt to blackmail Thompson?

A. Right.

Q. Over and above attorney's fees at some future day?

A. Yes. That's true.

Q. Have you seen Mastrian since you've been in the institution here?

A. I have seen him and Thompson but never had a word together, never talked to one another.

Q. Have you been close enough to have a conversation?

A. At times we were in speaking distance but nothing was ever said, just merely looks back and forth.

Q. Have you been close enough to either one of them to talk for any considerable period of time?

A. No.

Q. Has anybody in this prison or outside this prison put any pressure on you to change your story and to tell a different story?

A. No.

Q. And you are sure that what you are telling us today and have told us today which you wrote in that letter to the Governor and Chief Justice, is a real story as to what happened there?

A. This is exactly what happened.

Q. Between Sharp and Morris, which one would you say is the one that would line up the details of this thing as far as Morris, Sharp, Ingram and Butler are concerned?

A. Morris. You see, he had more to gain because he was getting 25% of anything that I got from the Thompson residence for the information that he relayed to me, and as far as Thompson and his money is concerned, it's like maybe attorneys sitting around and discussing cases or different cases, when we are together rumors spread, also when somebody hears that somebody has been flashing money or somebody is in a bar and sees somebody flash money and they know who the man is that word spreads around also, just like talking shop.

Q. And burglars or robbers talk shop just like lawyers or doctor or anybody else?

A. Anybody else.

Q. Right?

A. When they are together. Any time any one of them is out or sitting at a bar, maybe their wife or some neighbor's wife has gone shopping and they have seen a large amount of money dropped off to a certain store at a certain time or they know of somebody that makes big withdrawals or somebody deposits money at some time, all this gets around, never goes unobserved, hardly ever.

Q. Am I correct in stating that you are a burglar?

A. That's true.

Q. Do you have any convictions other than this one that brought you up here?

A. I have no convictions. I am on record only to what I pleaded guilty to two weeks ago.

Q. Were you stopped by the Morals Squad up in North Minneapolis?

A. Yes.

Q. One night?

A. Yes.

Q. Did they take anything away from you that night?

A. They took a pistol.

Q. Did you ever get the pistol back?

A. No. Not yet.

Q. Have you ever had any trouble with the police in Wisconsin where they might have taken a weapon away from you or anything like that?

A. No. The only trouble I ever had with the police there was when I was soliciting.

Q. In Wisconsin?

A. Right.

Q. Soliciting what?

A. As far as siding and roofing goes.

Q. And while you were over there working you had some trouble with the police?

A. No trouble. Just that there was what they call the Green River law which is a law that you cannot solicit in the town.

Q. They told you not to do it any more?

A. They told me not to solicit in the town, that they had a law there against soliciting.

Q. Were you fined or brought into court on this?

A. No. Not there.

Q. Were you searched?

A. No. I was questioned, that was all.

Q. Did you have a weapon with you at the time?

A. No.

Q. Have you ever been arrested or questioned by the police in Illinois?

A. No.

Q. Michigan?

A. I would rather not go into any details as far as, all I can say I don't have any convictions on the record.

Q. You realize if you are arrested or brought into a police station or something like this that there is a very good chance there is a record of it, a written record? I don't care whether you want to tell me about it or not, but you are aware this is true, just like there is a record of this Morals Squad situation in Minneapolis which did not result in a conviction, you understand that?

A. I know that and you probably have the knowledge that I was arrested and tried for a burglary in Aitkin, Minnesota, and was acquitted of the charge.

Q. You know Frank Bell?

A. Yes.

Q. Do you know what Frank Bell testified to in Duluth?

A. Yes.

Q. Is what Frank Bell testified to in Duluth correct?

A. It is.

Q. How did you find out what Frank Bell testified to?

A. I read it in the papers.

Q. And what he said was correct, is that right?

A. As far as the papers said and as far as what Orr said, and Gray said.

Q. That's all correct?

A. Right.

Q. I gather that you are acquainted then with the Barbecue that some of these people testified to in Duluth?

A. Yes. Very well acquainted with it.

Q. Do you know the owner of that place?

A. Yes, sir.

Q. What's his name?

A. Ciserona.

Q. Do you know him personally?

A. Yes.

Q. You've been in there on many occasions?

A. Yes, sir.

Q. You are well acquainted in that area?

A. Well acquainted in the Old Southern Barbecue, I don't know the people in the area, but I know some of the people that come in there.

Q. How long have you been a burglar?

A. Since 1953.

Q. 1953?

A. Yes.

Q. And what brings your recollection to 1953? Why do you state 1953?

A. I went over and got in contact with a friend of mine that I had known previously from the Marine Corps in Detroit.

Q. In Detroit?

A. In Detroit.

Q. And I gather somewhere in the year 1953 someplace you committed a burglary?

A. Right.

Q. How did you find out that Mrs. Thompson was a church-going woman and that she had children and all this sort of family information?

A. Through Morris.

Q. And where did Morris learn it?

A. From Mastrian and I guess he had met Thompson at one time when he had brought Mastrian over to Thompson's office on a legal matter.

Q. Do you know of any meetings between yourself and Mastrian or yourself, Mastrian and anybody else in which prior to the death of Mrs. Thompson, any murder was contemplated or discussed?

A. No.

Q. The only thing that was discussed prior to the death of Mrs. Thompson with anybody as far as you were concerned then is that you intended to burglarize the house or technically actually rob it since a person would be physically present there?

A. Yes.

Q. And that conversation took place with Morris?

A. Yes.

Q. Were Sharp, Ingram or butler aware of the fact that you were going to rob or burglarize this house before it happened?

A. It had been discussed in front of them.

Q. Do you recall whether or not anybody else was present during any of these discussions about Morris' previous burglary of this house or the prospective burglary by you of this house?

A. Sharp was present and Ingram was present.

Q. Do you know anything about the Campus Jewelry burglary?

A. Yes.

Q. Do you recall the newspaper articles on this when the Campus Jewelry burglary was, the year?

A. It was in 1963.

Q. I gather that you would just as soon not discuss that?

A. I would rather not go into anything of the details involved in any burglary or anything else.

Q. All right. Do you know a man by the name of Al Osfar. If you want to answer my question—

A. I better not get anybody else involved in this case than I involved already.

Q. All right. Let me ask you this same, this question somewhat along similar lines, if you want to answer it.

A. I don't want to answer.

Q. Are you acquainted with the furniture or appliance store which used to be in the vicinity of 15th and Nicollet Avenue South, that general area of town?

A. I know—I better not get involved in details because one thing leads to another.

Q. Are you personally familiar with that particular area of town in the general sense?

A. 15th and—

Q. Nicollet?

A. Yes.

Q. This general area around in there?

A. Yes.

Q. And I gather you have been in that particular area?

A. Yes.

Q. I don't mean any burglaries or anything of that kind.

A. Yes.

Q. But you've been in that area?

A. Yes.

Q. Other than just driving through?

A. Yes.

Q. Are you acquainted with Al Hartman?

A. Yes.

Q. Do you know a Jack Hartman?

A. Yes.

Q. Are you acquainted with Frank Bell's mother's home?

A. Yes.

Q. Have you left some clothes in her home on occasions?

A. Yes. I've been introduced to her.

Q. Do you know a man by the name of Stanley Gardner?

A. Yes.

Q. Did you ask Frank Bell to go in on a burglary with you?

A. Yes.

Q. Was the burglary that you are referring to the burglary of the Thompson home?

A. No. I had another burglary in mind.

Q. Have you ever been in on burglary with Bell? I don't want any dates now.

A. I don't want to get involved in that because the police are going to be coming up and everything else.

Q. All right. Do you know a Mr. Orr?

A. Yes.

Q. Do you know whether or not he was ever a locksmith or familiar with locks?

A. He is very familiar with locks, considered somewhat of an expert with locks.

Q. Is he capable of making keys for particular locks?

A. Making keys for any type of lock.

Q. Have you ever asked Mr. Orr to make a key for you?

A. Yes.

Q. Have you ever asked him to make a key for you with the idea in mind you were going to use that key to get into a house to burglarize it?

A. Yes.

Q. Did you have such a discussion with him in December of 1962?

A. I did. That was at the Flame at 15th and Nicollet.

Q. Which particular house did you have in mind at that time?

A. Well, wanted to be sure that I could get into the Thompson's home.

Q. Was this after the burglary by Morris?

A. Yes.

Q. Of the Thompson home I am speaking of?

A. Yes.

Q. Did Orr turn you down as far as making that key is concerned or did he make it for you?

A. At this time I don't know how far Mr. Orr wants to be involved in this case and I would rather not say.

Q. Am I correct in stating that you are now stating that prior to entering the Thompson home on December 6th you had no intention whatsoever of harming Mrs. Thompson?

A. What was the date that you just said?

Q. March 6, excuse me, I believe I said December, I'm sorry. I mean March 6th?

A. That's true. All I was going to do was get what money I could and tie her up and leave. I knew I had plenty of time to get away.

Q. Did anybody pay you any money for the purpose of having you either burglarize, or rob the Thompson home, or in any way molest Mrs. Thompson?

A. No, sir.

Q. How much money did you get out of the Thompson burglary or robbery in March of 1963?

A. $125.

Q. During this approximate same period of time, did you have access to some other money either from working or through other means?

A. Yes.

Q. During this period of time did you come up with more than a hundred dollars, let's say?

A. Yes.

Q. Did you come up with enough money so that you could go out and have a good time?

A. I believe you will find if you ask about that, I always had money. I was never without it.

Q. And this was either through your work in the house improvement field or your sideline, so to speak, if I may call burglaries a sideline?

A. That's true.

Q. What day did you originally plan on burglarizing or robbing the Thompson home, what day did you intend to do it is what I mean?

A. On the morning of March 6th, the morning that it was done.

Q. Did you have any intention of doing it the day before?

A. No.

Q. Where did this story then that was told at the trial about committing this crime on March 5, the day before the March 6 in question, come into the picture?

A. I thought it would look better for me if I had put it over for a day because I didn't want to do it.

Q. A question that you were a little hesitant about performing this sort of thing?

A. That's right.

Q. This again was your own idea then?

A. Right.

Q. And you are telling us now what you say is the truth for the first time of all the stories that you have told about this to anybody and that is that Thompson had absolutely nothing to do with the death of his wife?

A. That's right.

Q. Did Thompson—excuse me. Did Thompson have anything whatsoever to do with any burglary or robbery of his home?

A. No. Never.

Q. To the best of your knowledge, did Thompson have any knowledge whatsoever of the fact that Sheldon Morris person-

ally burglarized his home in December of 1962?

A. He didn't have no knowledge of that.

Q. Did he have any advance knowledge whatsoever of the fact that you had entered his house for the purpose of burglarizing or robbing or committing any other crime in his house?

A. No.

Q. Remember the scale model of the Thompson home that was in the courtroom in both cases?

A. Yes.

Q. Had you ever prior to the trial either seen that scale model of the home or any other scale model of the Thompson home?

A. The detectives Barkley and Phillips came over on Sunday to the jail, which can be verified by the jailer, and took me out in the room behind the office where you first walk into the jail and drew some diagrams and everything and refreshed my memory.

Q. Was the model there at that time?

A. The model was not there at that time.

Q. Have you ever seen that model before the time it was seen in court?

A. No.

Q. And no model similar to it?

A. No.

Q. But you have seen some drawings or discussed the makeup of the Thompson home prior to actually testifying?

A. Yes.

Q. And did you and Morris and Mastrian go out and dispose of the gun and the clothes as testified to during the trial?

A. When Morris called me to see how the burglary went, he said he was with Mastrian and I told him to drop him off

before he picked me up. I didn't want to see him. We had this stuff to get rid of.

Q. When Morris picked you up who was with him, if anyone?

A. Nobody was with him. He was by himself.

Q. I gather what you are saying then is that you and Morris, and only you and Morris, went out and disposed of these things?

A. That's right.

Q. Mastrian was not present at this time?

A. Mastrian was not present.

Q. Do you know of any animosity between Morris and Mastrian that would cause Morris to pull a stunt like this on a guy he had been permitted to live with for many months?

A. Morris was involved in the murder, and he knew he was involved because he was receiving part of the money, and whatever I got from the Thompson's residence, so he knows what the law reads, that he is as much involved as I am.

Q. Did Morris know the exact day on which you were going to burglarize or rob the Thompson home?

A. Yes. He needed money, and he was pressing me to get it done with. He wasn't working at the time. He was living then with Mastrian.

Q. And you tell me that you drove that car over there yourself, it was not Morris or anybody else?

A. No. It was not Morris.

Q. Are you telling me it was not Sharp, Ingram or Butler either?

A. No.

Q. You are telling me nobody else, just you in that car?

A. That's right.

Q. No girl friends, nobody else, period?

A. Nobody else.

Q. Is that right?

A. That's right.

Q. Can you tell me where you were the night before this happened, night of December 5—not December 5, excuse me, I keep saying December 5—March 5, I'm sorry.

A. I was—had been at the President Bar and also at a 3.2 place by the name of Harold's at 27th and Nicollet.

Q. Will you tell me whether or not you were during the day and the evening or the night prior to March 6th, the day in which this happened, in the company of two girls, either together or separately?

A. Yes.

Q. Were you with two girls either together or separately that night?

A. There again we are going to get involved in names and people don't want to be drug into this.

Q. All right. Let me tell you this, that I have information which leads me to believe that I know the name of two girls with whom you were either together individually, one at one part of the evening and one at a different part of the evening, or together, I have the names and I know where they live. I know where they can be located.

Now, what I am asking you is whether it is true that you were with two girls on the evening and night before this occurred, either together or separately?

A. Yes.

Q. That's accurate information that I have in other words, is that right?

A. Right.

Q. I gather then that you were not with Mr. Mastrian on the evening and night prior to March 6th?

A. No.

Q. You did not go over this matter for the last time with him then as has been testified to, the night before?

A. That was completely false because that's the reason they had to bring in a witness to put him with me or in contact with me and that was Margaret Johnson, the witness they brought in.

Q. And you state this was cooked up between Butler, Ingram, Sharp, Morris and yourself during the Mastrian trial?

A. During the Mastrian trial.

Q. Right?

A. This was—this idea was conceived in the County Jail when they let us all get together but then we are more confidential with ourselves, meaning Morris and me than we are with the others, and they didn't hear about the lady, knew about it somewhat, but they didn't know in detail what we were going to do.

Q. Morris was kind of the ring leader as far as these trials are concerned, is that right?

A. Right.

Q. And Morris definitely was in on this burglary or robbery ahead of time in the sense he was to receive 25% of the take?

A. Right.

Q. But not even Morris intended any death to occur here?

A. No.

Q. As far as the death of this woman is concerned, I gather from what you are saying, it occurred as part of a burglary—robbery, and you had no intentions whatsoever that she should die, it's one of those things that happened?

A. One of those things that came about. I lost my head. I don't know why it happened, to this day I don't know why it happened.

Q. Has anybody indicated to you at all, or do you have any feeling at all that you are going to receive some kind of a break or some kind of a leniency situation as a result of telling us what you have told us today and as a result of the information that you attempted to write to the Governor?

A. I don't know what it will bring but I do know it's going to bring good and clear a man that deserves it, that's been a credit to his community and everything else, from what I have read.

Q. You are speaking specifically now of my client Thompson, is that right?

A. Yes.

Q. And, incidentally, you are making the same statement as far as clearing a man is concerned, as far as Mastrian is concerned?

A. Yes.

Q. Is there anything else about this that you can tell me that might be helpful in clarifying this matter such as other people that you might have told in advance you were going to burglarize this home or rob this home, people you might have told about it afterwards, people you might have dropped some kind of an implication to this effect to?

A. There is one man I told the complete thing to what actually happened, but he has been kind of what we should say on the outside of the law all of his life and from my knowledge now when this thing broke he is not around here.

Q. Are you willing to give me his name so I can check out what you have just told me with him?

A. If it would remain in confidence I would tell you, but

I know that it would be recorded and it wouldn't be secret any more and I don't know if the man wants to come forward or not.

Q. Let me go at this a different way. Did you give him these facts after this occurred or before it occurred?

A. After it occurred.

Q. As far as you are concerned, is he a reliable individual?

A. He has always been honest with me.

Q. That's what I mean, as far as you are concerned?

A. Yes.

Q. Can you give me his age?

A. There again it would go into the record and I imagine this is going to be read and if I give you the age the police would probably know who I am talking about maybe because they have knowledge that I knew this certain individual.

Q. You realize that if you told somebody about this after it occurred that the most that they could be guilty of, even if they could get into trouble, would be as an accessory after the fact, assuming he had no knowledge of it ahead of time, this is a five-year penalty situation. Are you aware of that?

A. I'm aware that he would be—

Q. I mean assuming that—I am not saying this individual, based on the fact you merely told him what had happened, is guilty of being an accessory after the fact, I am saying that regardless of the circumstances that is the most he could be guilty of.

A. I wouldn't want to see him in prison again myself.

Q. Are you willing to give me the name of this individual if the court reporter does not take it down and steps outside this room? Look it, I have a guy that's in this prison that you say doesn't belong here, had nothing to do with this thing, is just as clean now as he has been for the last 35, 38 years, or

however old Gene Thompson is, he doesn't belong in prison for this or any other crime. You have told one story on the witness stand and you have told one story to the police, basically one story, although there is some deviations even there, and now you are telling what you are telling us anyway is the truth for the first time and what you are telling us for the first time here is basically what I understood the story to be all along, but in order to present this to a court, I have got to have some kind of facts on which to base it. I have to have some kind of facts, hopefully anyway, over and above merely your word for it. I am not questioning your word, but I am questioning how far a court can go trying to be fair and reasonable about this thing without additional information other than what you have given me, and as you well know, if this individual doesn't want to talk to me he doesn't have to talk to me. All I can do is ask just like I asked you. I can't force anybody to talk to me.

A. I will give the name with the condition that the recorder does step out and on the condition that if this fellow wants to tell about it, that you see that he gets immunity from this.

Q. Well—

A. Try to talk with one of the judges or something.

Q. All right. Look it, I am not a public official. I have no authority and neither has any public official sitting here talking to you have any authority whatsoever to grant anybody any immunity. There is a statutory procedure now whereby an individual can be called to a witness stand and if he refuses to testify on the grounds of incrimination a request may be made to the court to grant him immunity and thereby compel him to testify even though it would otherwise incriminate him, and if the Court grants that request then he can be forced to testify, but what he testified to can't be used against him.

But I am not a judge and I am not the prosecutor. I can't guarantee you that.

All I can do is tell you if this is the correct story you are telling, and if this friend did testify to this effect and this did clear this matter up, I don't know of any judge that wouldn't take it into consideration but the fact remains, as I told you, assuming that it's that strong a situation, he could still get five years. I can't make any promises to you on that. All I know is he doesn't have to talk to me if he doesn't want to, and he doesn't have to testify and unless he wants to, and the only way he can be forced to testify is if he is granted immunity, assuming that to testify might reasonably tend to incriminate him.

A. Well, I will give you his name if you want to talk to him yourself and see what he says first.

Q. All right. Do you care whether it goes on the record or don't you want it on the record?

A. I don't want it on the record.

(Whereupon the Court Reporter left the room and a short recess was taken.)

By Mr. Jones:

Q. Do you know of any people who were in any of the jails in Phoenix or in St. Paul, Minneapolis or Duluth who might have overheard anything that Morris, Sharp, Ingram, Butler or you might have said about this thing?

A. The only thing I can say is that when I was in Phoenix, if you check with the officials who were on duty there, they could tell you that Sharp was put into my tank by mistake and the only other way I know, if you could get the names of the men that were in the tank I was in, or the tank that Sharp was in, and they could tell you about us talking together back and forth.

Q. Did you have a cellmate at that time?

A. I did but—let's see, his name was Grundage, I don't know how you spell it, and I don't know his first name.

Q. Would he have overheard any of this?

A. He might have overheard some of the things we were talking about.

Q. Were you in the County or City Jail or don't you know?

A. That was in the City Jail.

Q. Are you willing to testify as to what you have told me today?

A. Certainly.

Q. Are you willing at this time to be sworn by Mr. Anderson here and to give me a sworn statement under oath, in other words?

A. Yes.

Mr. Jones: Why don't you swear him.

(Whereupon, Dick W. C. Anderson, was sworn to tell the truth, the whole truth and nothing but the truth so help him God.)

By Mr. Jones:

Q. Would you give me your full name?

A. Dick W. C. Anderson.

Q. You have been charged and pleaded guilty to first degree murder?

A. Yes.

Q. You are presently in Stillwater Prison?

A. Yes.

Q. You are presently in Stillwater Prison serving a life sentence?

A. Yes.

Q. Has anybody made any threats or promises to you, any kind of inducements by implication or otherwise for the pur-

pose of having you tell what you told today and what you put into a letter addressed to the Governor?

A. No, sir.

Q. Which was uncompleted?

A. No, sir.

Q. All right. Now, you listen real carefully to what I am going to say right now. Has everything that you told me, to the best of your knowledge, from the time that I first walked in here up until the present time, which has been recorded here as you have seen it recorded by Mr. Anderson, absolutely correct?

A. Absolutely correct.

Q. All right. Now, listen carefully again. Is what you said on the witness stand twice, once in Minneapolis and once in Duluth and what you told to the police orally as well as in writing, false as far as it in any way implicated Mr. Thompson in the death of his wife?

A. True.

Q. And is the same true as far as Mr. Mastrian is concerned?

A. True.

Q. You are willing to testify to this under oath regardless of the consequences?

A Regardless.

Q. You understand that it's possible you might be subjected to a perjury charge?

A. True.

Q. And you understand that it might be also possible for you to be subjected to a great deal of interrogation, a great deal of personal inconvenience?

A. True.

Q. As a result of this?

A. I realize that. I thought that over before I decided to write the letter to the Governor.

Q. Are you willing to take a lie detector test on what you have told me today?

A. Yes.

Q. Are you willing to take a truth serum test or what is sometimes called a narco-analysis examination in regard to what you have told me today?

Maybe I should explain what they do. They inject a drug which makes you somewhat unconscious, if it works, it's such that you still are aware of what is being asked you and sometimes again, if it works, you will tell the truth under these circumstances where you might not otherwise tell the truth. It's kind of like talking in your sleep, so to speak, over-simplified, although I don't want that to be a full explanation of it, but this is the basic idea anyway. Are you willing to do that?

A. Yes. I will do it.

Q. And what you are tellling me is that this is the truth and if the lie detector test is valid and if the narco-analysis test is valid it will reveal the same facts tht you have given me today?

A. True.

Q. And the same is true regardless of any interrogation or cross-examination, no matter how skilful, this will come out as the true facts?

A. Right.

Q. Do you have any objection if I utilize this information publicly or otherwise relative to the Thompson matter?

A. No. I don't have any objections.

Q. Is the same thing true as far as the Mastrian matter is concerned?

A. True.

Q. Is there anything else that you want to tell me that you might think would be helpful or otherwise?

A. Well, with everything coming late like it has been and trying to get everything together in one period of time here, I think there probably will be things that later on I might be able to add that would help in the investigation that would clear Mr. Thompson and Mr. Mastrian. I don't know if I skipped any details or not, but I may have.

Q. Would you have any objection if I brought Mr. McMullin up here to interview you?

A. You can bring him up if you want to, but as far as talking to him there's going to be a lot of pressure exerted from the County Attorney's Office like I realized before, and the pressure is going to be felt here also. I realized that before I started the letter.

Q. The fact remains if I brought Mr. McMullin up there you would talk to him?

A. Yes. I will talk to him if you want me to.

Q. Now, again, so that it is part of this sworn statement, you will recall that before we started to discuss anything with you that I advised you that I represented Mr. Thompson, I advised you that to the effect you didn't have to talk to me if you didn't want to, but I wanted to discuss this matter with you in view of what happened the last couple of days?

A. Yes.

Q. Is that right?

A. Yes.

Mr. Jones: That's the end of this sworn statement.

By Mr. Jones:

Q. Have you any idea of where Sharp, Ingram and Butler or any one of them have headed for or can be located at the present time?

A. Well, the Probation Office should be able to tell you where Butler is at because he is on probation. The same with Morris and the Federal Probation Department should be able to tell you where Ingram is at and as far as Sharp goes, if he goes any place he would probably go to Phoenix, that's where his folks are and his relatives.

Q. Out of these four individuals which one do you think would be most likely to tell the truth if they were advised that you had told the truth?

A. Well, there again it would be hard to say because pressure is going to be exerted on them while they are on probation.

Q. How about Sharp?

A. Sharp probably would because they have no hold on him as far as probation or anything like that unless they would threaten him with some of the charges that they did not charge him from from Minneapolis that they knew about.

Q. Do you know where his folks live in Phoenix?

A. No, I don't.

Q. Do you know where he hangs out in Phoenix, any bar or anything like that?

A. Well, from my knowledge he is still here in Minneapolis.

Q. Do you know where?

A. His—his wife is named Joan Nelson.

Q. Joan what?

A. Nelson. He was married to her and then they were divorced and she is, whenever they get an apartment or something she uses her name as Joan Nelson when he telephones and so forth like that.

Q. You think this would be in Minneapolis?

A. Could very possibly be from my knowledge and from what I hear through the grapevine and everything, he is in Minneapolis yet.

Q. You don't have a name that you can give me to start on that grapevine, by any chance?

A. No. Be better not to.

Q. Have you ever met Jim Bowell?

A. How do you spell the last name?

Q. Something like B-o-w-e-l-l in St. Paul?

A. Sounds familiar. I can't say for sure or not.

Q. Jim Trainor?

A. Sounds like a name of one of the insurance men or something.

Q. Or an insurance man by the name of Peterson?

A. A lot of times names don't mean too much to me until I see faces.

Q. Trainor and Peterson testified at the trial, they are insurance men.

A. I know them from the papers and that.

Q. Same with Bowell, he is not an insurance man but testified at the trial, does that name ring any bell with you?

A. No. Just—I probably got the name from the papers then because I was following the trial pretty closely.

Q. Do you have any objection if I come up and again have an interview with you at some future date?

A. No. Any time.

Q. All right. Just one last thing. And you can do what you want to in regard to somebody else talking to you about this. I don't care. They can send three thousand people up here to talk to if they want to. I warn you about one thing, you make

sure you tell them the truth whatever it happens to be, you understand that?

A. Yes.

Q. Aside from that you are on your own. I don't know what the intentions of various authorities are in this regard, whether they are going to send people up to interview you or not interview you, what time of the day this is going to be, how often it is, how many people are going to be involved, you do have access, however, to the Governor and to the Chief Justice of the Minnesota Supreme Court in the sense that any time you figure you are being abused as distinguished from zealous efforts on their part to satsify themselves as to where the truth is, you have a perfect right to communicate by letter to the Governor and to the Chief Justice. But, on the other hand, these investigators have a right to investigate also, and so just a question that they keep it within reason, that's all, and I don't anticipate any physical abuse or mental abuse of anything like that on their part; but if you think that they are out of line, whether they are or not, you have a perfect right to complain accordingly.

A. What is your idea as far as the letter that they still have of mine?

Q. For your information, that letter is in the hands of the State Government right now and—

A. Do you know if, or would you check with the Governor to see if he got my other letter?

Q. Yes.

A. The one I wrote Monday?

Q. That's right. The governor will also—well, be advised as to where the eleven-page letter is so that—

A. He will see a copy of this so I won't have to go through the process of rewriting it another one?

Q. You want him to see this?

A. I would like for you to make sure a copy of this gets to the Governor and to the Chief Justice also.

Q. Well, I can get it to the Governor's office. I can't guarantee you that the Chief Justice will look at it. There is a matter pending before him and whether it would be proper for him to take a look at this without going through certain formalities and even then, I don't know. But as far as the Governor's office is concerned, if you want them to have a copy of this I will see to it that they get a copy. Is that what you want?

A. Yes, they should probably have a copy, and—

Q. Anything else you can think of?

A. No. That's about all.

Mr. Jones: Okay.

(The Statement came to an end.)

I, Earl G. Anderson, Court Reporter, do hereby certify that the above and foregoing is a true and correct copy of the Statement taken by me of Dick W. C. Anderson on July 8, 1964.

EARL G. ANDERSON,
Official Court Reporter.

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

STATE OF MINNESOTA,

Plaintiff,

vs.

T. EUGENE THOMPSON,

Defendant.

AFFIDAVIT

State of Minnesota
County of Hennepin—ss.

I, RALPH H. TAHASH, being first duly sworn upon oath depose and state that I was formerly the warden of the Minnesota State Prison at Stillwater, Minnesota, from September 30, 1960, to April 1, 1968. At the present time I am a member of the Adult Corrections Commission, the paroling authority for adult prisoners for the State of Minnesota.

That while I was warden of the State Prison, Dick W. C. Anderson was committed to my custody and control by the Ramsey County District Court on June 22, 1964. That he remained at the State Prison in Stillwater until July 20, 1964. On July 20, 1964, I was served with a writ of habeas corpus issued by the Federal District Court for the State of Minnesota ordering that Dick W. C. Anderson be transferred to the custody of the United States Marshal's office. That was the last time that I have seen Mr Anderson.

While he was at the prison, I knew of no threats made against him, nor was there any record in our files indicating

that Dick W. C. Anderson had complained of any threats. Since he had testified for the State in a highly publicized murder case, I took it upon myself to personally observe him at the prison from time to time to make sure that there were no threats or intimidations of any kind made against him. In fact, as I observed him at the prison, and particularly in the mess line during his lunch and dinner breaks, he appeared to be completely at ease and showed no evidence of being threatened or intimidated or having any pressure whatsoever put upon him.

There was no inquiry made to me concerning the possibility of danger to Dick W. C. Anderson, either from the Ramsey County Attorney's office, the St. Paul Police Department, or any other governmental agency (state or federal). I was first made aware that he was being transferred from the State Prison when I received the writ of habeas corpus from the Federal Court. If there had been any danger to Dick W. C. Anderson's life or any threats made against him, we certainly had the facilities to protect him from any such activity. If, in fact, there was a problem that we could not handle at the State Prison, and I doubt if any such problem would ever have existed, we could easily have arranged for his transfer to the State Reformatory where appropriate security measures could have been instituted that would have insulated Anderson from any alleged threats or bodily harm. That even after the transfer of Dick W. C. Anderson from the State Prison, I was never made aware of any facts concerning this transfer.

RALPH H. TAHASH

Subscribed and sworn to before me this 11th day of February, 1969. — Dorinne R. Dobson, Notary Public, Hennepin County, Minn. My commission expires June 25, 1971.

Re: Murder of Carol S. Thompson
Laboratory No.: 63-0173
Offense No.: 313433
Date Received: 3/6/63
Time Received: —
Turned In By: —
Examined For: Homicide Division
Examiner: T. R. Elzerman

REPORT

This report is in addition to the other laboratory reports and is the results on the blood testing.

A wet sample of blood from the floor of the scene and a sample of blood removed from the body of Carol Thompson taken at the time of the autopsy were typed and found to be Type O blood.

The following listed stains were analyzed with the results indicated with each:

1.) Stain from bathroom sink; blood of human origin, insufficient for typing tests.

2.) Stain from drawer pulls of chest in master bedroom; blood of human origin, Type B or Type O with beta factor deteriorated.

3.) Stain from kitchen floor under silverware drawer; blood of human origin, Type B or Type O with beta factor deteriorated.

4.) Spots from kitchen floor by refrigerator; blood of human origin, Type B or type O with beta deterioration.

5.) Stained knife from kitchen drawer; blood of human origin, typing inconclusive because insufficient stain.

6.) Stain on black and white pullover shirt from master bedroom; blood of human origin, typing tests inconclusive be-

cause of the presence of some material in the garment which destroyed the known test cells.

7.) Control from the item in No. 6; negative.

8.) Stain on pair of boxer undershorts found in master bedroom; blood of human origin, Type B or Type O with beta deterioration.

9.) Control from Item No. 8; negative.

10.) Blood stain from victim's housecoat used as a control; blood of human origin, Type O absolute.

11.) Control from Item No. 10; negative.

12.) Stain on white T-shirt found in the master bedroom; blood of human origin, insufficient stain to determine type.

13.) Control from Item No. 12; negative.

14.) Stain from silverwear drawer front; blood of human origin, insufficient stain to determine type.

15.) Stain from inside of the kitchen silverwear drawer; blood of human origin, Type B or Type O with beta deterioration.

In concluding the tests it was noted that the stains in Items 2, 3, 4, 5, 8, and 15 were either Type B or Type O with beta deterioration. These are all items which appear to have been handled by the suspect. The tests indicated that this individual may have a weak beta factor which may be characteristic of his blood. If this is the case, the suspect has Type O blood with a weak beta factor.

A-143

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

File No. 48680

T. EUGENE THOMPSON,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

AFFIDAVIT OF NORMAN J. MASTRIAN

State of Minnesota
County of Washington

Norman J. Mastrian, being first duly sworn on oath, deposes and states:

That on April 10, 1964, in St. Louis County, Duluth, Minnesota, he was convicted and sentenced to life in prison for Murder 1st degree arising out of the death of Carol S. Thompson on March 6, 1963, in St. Paul, Ramsey County, Minnesota.

That the State's theory of the case during the trial accused affiant of being an "alleged middle man" in a conspiracy to murder Mrs. Thompson.

That affiant, to date hereof, has never met nor spoken with Dick W. C. Anderson, the admitted murderer of Mrs. Thompson; and that the first time that affiant ever saw Anderson was after affiant's arrest and during an appearance in the District Court in St. Paul, Minnesota in 1963; and that Ander-

son appeared as a witness in affiant's trial in Duluth, Minnesota.

That he met T. Eugene Thompson for the first time in July, 1962, when he retained him to be his attorney in a civil matter arising out of the fact that affiant had been arrested and released by the Anoka County authorities in the Spring of 1962; and that Mr. Thompson did not represent him in Anoka, nor did he know him at the time of said arrest and release.

That affiant did not kill Mrs. Thompson.

That affiant did not plan with T. Eugene Thompson, nor with anyone else, the death of Carol S. Thompson, who died on March 6, 1963.

Further affiant sayeth not.

Dated this 17th day of March, 1969, at Stillwater Prison, Minnesota.

NORMAN J. MASTRIAN
Affiant

Subscribed and sworn to before me this 17th day of March, 1969, a notary public in and for the County of Washington, Minnesota. — Roy F. Farnham.

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SUPREME COURT, U. S.

FILED
MAY 5 1969
JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1968

No. 1230

T. EUGENE THOMPSON,

Appellant,

vs.

TRAVELERS INSURANCE COMPANY, CONTINENTAL CASUALTY COMPANY, TIME INSURANCE COMPANY, EDWARD ERNEST NELSON, an Underwriter at Lloyd's of London, ZURICH INSURANCE COMPANY, GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., and OTTO SWOBODA, as Special Administrator and Guardian,

Appellees.

APPELLEES' MOTION TO AFFIRM OR DISMISS APPEAL AND BRIEF

OSCAR C. ADAMSON, II
400 Second Avenue South – 7th Floor
Minneapolis, Minnesota 55401
and
JAMES H. GERAGHTY, SAMUEL L. HANSON,
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1969—Northwest Brief Printing Co., 322 S. Fourth St., Minneapolis 55415 338-5078

TABLE OF CONTENTS

	Page
MOTION TO AFFIRM OR, IN THE ALTERNATIVE, TO DISMISS THE APPEAL	1
STATEMENT OF THE CASE	3
ARGUMENT:	
Introduction	7
I. The Federal Questions Raised by Appellant Have Been Previously Decided Adversely to Appellant	8
II. The Appeal Was Not Taken in Conformity to Title 28, United States Code, §1257(2) and Does Not Present a Substantial Federal Question, and the Judgment Rests Upon an Adequate Non-Federal Basis	12
A. The appeal is not within the jurisdiction of this Court because not taken in conformity to Title 28, U.S.C., §1257(2)	12
1. The questions presented do not challenge the validity of any Minnesota statute on the ground of its being repugnant to the United States Constitution and thus do not meet jurisdictional requirements of §1257(2)	12
2. The Minnesota Supreme Court did not pass upon the validity of Minnesota Statutes, §525.87, and thus the questions presented do not meet the jurisdictional requirements of §1257(2)	14
B. The questions raised in the jurisdictional statement are not substantial and thus are not within this Court's jurisdiction	15
C. The decision of the Minnesota Court is based upon the the adequate non-federal ground of collateral estoppel	18
III. The Federal Questions Sought to Be Reviewed Were Not Timely or Properly Raised, or Expressly Passed On	20
CONCLUSION	23
APPENDIX:	
Opinion of the Supreme Court of Minnesota: Travelers Insurance Company v. Thompson, 163 N.W.2d 289 (Minn. 1968)	25

TABLE OF AUTHORITIES

CASES: Page

Adams v. Louisiana Board of Liquidators, 144 U.S. 651, 12 S.Ct. 756, 36 L.ed. 578 (1892) 19
Adelman v. Onischuk, 271 Minn. 216, 135 N.W.2d 670 (1965) 20
American Surety Co. v. Baldwin, 287 U.S. 156, 53 S.Ct. 98, 77 L.ed. 231 (1932) 22
Austin v. United States, 125 F.2d 816 (7th Cir. 1942) 9, 17
Becchetti v. Bakke, 274 Minn. 85, 142 N.W.2d 288 (1966) 21
Campbell v. Glenwood Hills Hospitals, 273 Minn. 525, 142 N.W.2d 255 (1966) 21
Central Land Co. v. Laidley, 159 U.S. 103, 16 S.Ct. 80, 40 L.ed. 91 (1895) 14
Chouteau v. Gibson, 111 U.S. 200, 4 S.Ct. 340, 28 L.ed. 400 (1884) 19
Ciucci v. Illinois, 356 U.S. 571, 78 S.Ct. 839, 2 L.ed.2d 983 (1958) 3
Cleaver v. Mutual Reserve Fund Life Association, 61 L.J.Q.B. 128 [1892], 1 Q.B. 147 10
Connecticut Fire Insurance Company v. Ferrara, 277 F.2d 388 (8th Cir. 1960) 9-10, 17
Consol. Turnpike Co. v. Norfolk & Ry. Co., 228 U.S. 326, 33 S.Ct. 510, 57 L.ed. 857 (1912) 22
Deposit Bank v. Frankfort, 191 U.S. 499, 24 S.Ct. 154, 48 L.ed. 226 (1903) 17
Eagle, Star & British Dominions Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314 (1927) 17
Edelman v. California, 344 U.S. 357, 73 S.Ct. 293, 97 L.ed. 357 (1953) 22
E. I. DuPont De Nemours v. Richmond Guano Co., 297 Fed. 580 (4th Cir. 1924) 17
Enterprise Irrigation District v. Canal Co., 243 U.S. 157, 37 S.Ct. 318, 61 L.ed. 644 (1917) 19
Fleming v. Fleming, 264 U.S. 29, 44 S.Ct. 246, 68 L.ed. 547 (1923) 8
Fullerton v. Texas, 196 U.S. 192, 25 S.Ct. 221, 49 L.ed. 443 (1905) 22
Godchaux Co. v. Estopinal, 251 U.S. 179, 40 S.Ct. 116, 64 L.ed. 13 (1919) 22
Gt. Northern Ry. v. Sunburst Co., 287 U.S. 358, 53 S.Ct. 145, 77 L.ed. 360 (1932) 22
Harding v. Illinois, 196 U.S. 78, 25 S.Ct. 176, 49 L.ed. 394 (1904) 14
Home Building & Loan Association v. Blaisdell, 290 U.S. 398, 54 S.Ct. 231, 78 L.ed. 413 (1934) 9
In re Greifer's Estate, 333 Pa. 278, 5 A.2d 118 (1939) 17
In re Kravitz' Estate, 418 Pa. 319, 211 A.2d 443 (1965) 17
Kelmar v. District Court of Fourth Judicial District, 269 Minn. 137, 130 N.W.2d 288 (1964) 21

Page

Kenny v. Craven, 215 U.S. 125, 30 S.Ct. 64, 54 L.ed. 122 (1909) .. 19
Klein v. Pasch, 153 Minn. 291, 190 N.W. 338 (1922) 11
Lentz v. Pearson, 246 Minn. 145, 74 N.W. 662 (1956) 21
Lowe v. Patterson, 265 Minn. 42, 120 N.W.2d 313 (1963) 21
Mineo v. Eureka Security Fire & Marine Ins. Co., 182 Pa. Super. 75, 125 A.2d 612 (1965) 17
Northern Pacific Railroad v. Ellis, 144 U.S. 458, 12 S.Ct. 724, 36 L.ed. 504 (1892) 19
N. Y. & N. E. Railroad Co. v. Bristol, 151 U.S. 556, 14 S.Ct. 437, 38 L.ed. 269 (1893) 9
N. Y. Mutual Life Insurance Co. v. Armstrong, 117 U.S. 591, 6 S.Ct. 877, 29 L.ed. 216 (1886) 9, 15, 16
Oak Center Creamery Company y. Grobe, 264 Minn. 435, 119 N.W. 2d 729 (1963) 21
Postal Tele. Cable Co. v. Newport, 247 U.S. 464, 38 S.Ct. 556, 62 L.ed. 1215 (1918) 12, 18, 19
Radio Station WOW v. Johnson, 326 U.S. 120, 65 S.Ct. 1475, 89 L.ed. 2092 (1945) 22
Railway Co. v. Twombly, 100 U.S. 78, 25 L.ed. 550 (1879) 17
Reflior v. Lansing Drop Forge Co., 134 F.2d 894 (6th Cir. 1943) 17
San Francisco v. Itsell, 150 U.S. 65, 14 S.Ct. 20, 37 L.ed. 999 (1890) 19
Sharpless v. Grand Lodge A.O.U.W., 135 Minn. 35, 159 N.W. 1086 (1916) 9, 13, 16
Southern R. Co. v. Durham, 266 U.S. 178, 45 S.Ct. 51, 69 L.ed. 231 (1924) 10
State v. Oak Center Creamery Company, 269 Minn. 505, 131 N.W. 2d 621 (1964) 21
State v. Thompson, 273 Minn. 1, 139 N.W.2d 490 (1966) 4
Straus v. American Publishers Assn., 201 Fed. 306 (2nd Cir. 1912) 17
Taylor v. Taylor, 257 N.C. 130, 125 S.E.2d 373 (1962) 17
Teitelbaum Furs, Inc. v. Dominion Ins. Co., 25 Cal. Rptr. 559, 374 P.2d 439 (1962) 17
Thompson v. Minnesota, 385 U.S. 817, 87 S.Ct. 39, 17 L.ed.2d 56 (1966) 4
Thompson v. Tahash, 286 F.Supp. 633 (D. Minn. 1968) 5
Travelers Insurance Company v. Thompson, 163 N.W.2d 289 (Minn. 1968) 3, 6, 8
United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.ed.2d 138 (1968) 11
Von Hoffman v. City of Quincy, 71 U.S. 535, 18 L.ed. 403 (1867) 8
Walker v. Saurinet, 92 U.S. 90, 23 L.ed. 678 (1875) 10
Wischstadt v. Wischstadt, 47 Minn. 358, 50 N.W. 225 (1891) 11
Zucht v. King, 260 U.S. 174, 43 S.Ct. 24, 67 L.ed. 194 (1922) 15

STATUTES AND RULES: Page

28 United States Code, §1257(2) 12, 14, 15
Minnesota Statutes, §525.87 ..... 3, 4, 7, 8, 11, 13, 14, 15, 16, 21, 23
Minnesota Rules of Civil Procedure, Rule 24.04 20
Minnesota Rules of Civil Appellate Procedure, Rule 144 20

West's Anno. Calif. Probate Code, §258 16
Conn. P. A. 1965 C. 514, §45.275 16
D. C. Code 1961, §18-109 16
Title 6, Ind. St. Anno., §6-212 16
Kan. St. Anno., §59-513 16
La. St. Anno., C. C. Arts. 996, 1560, 1710 16
N. Dak. Century Code Anno., §56-04.23 16
Okla. St. Anno., §231 16
So. Car. Code 1962, §19-5 16
Vernon's Anno. Tex. St., §41(d) 16
Utah C. A. 1953, §74-3-22 16
Va. C. A., §64-18 16

SECONDARY AUTHORITIES:

Coke, Litt. 149b 10
5 Scott, Trusts, §492, p. 3497, n. 5 (3rd ed. 1967) 16

In The

Supreme Court of the United States

October Term, 1968

No. 1230

T. EUGENE THOMPSON,

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vs.

TRAVELERS INSURANCE COMPANY, CONTINENTAL CASUALTY COMPANY, TIME INSURANCE COMPANY, EDWARD ERNEST NELSON, an Underwriter at Lloyd's of London, ZURICH INSURANCE COMPANY, GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPORATION, LTD., and OTTO SWOBODA, as Special Administrator and Guardian,

Appellees.

APPELLEES' MOTION TO AFFIRM OR DISMISS APPEAL AND BRIEF

MOTION TO AFFIRM, OR, IN THE ALTERNATIVE, TO DISMISS THE APPEAL

To the Honorable the Supreme Court of the United States of America:

I.

The appellees jointly move the Court, pursuant to Rule 16(d), to affirm the judgment sought to be reviewed on appeal on the ground that the Constitutional questions raised by appellant have been previously decided adversely to appellant.

II.

In the event the foregoing motion be denied, then the appellees jointly move the Court to dismiss the appeal pursuant to Rule 16(a) and (b) on the grounds that:

1. The appeal is not within the jurisdiction of the Court because it was not taken in conformity to United States Code, Title 28, Section 1257(2); that the appeal does not present a substantial federal question; and that the judgment rests on an adequate non-federal basis; and

2. The federal questions sought to be reviewed were not timely or properly raised, or expressly passed on.

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STATEMENT OF THE CASE

The appellant's jurisdictional statement makes reference primarily to matters which are not included in the record certified by the Minnesota Supreme Court and which, under *Ciucci v. Illinois*, 356 U.S. 571, 78 S.Ct. 839, 2 L.ed.2d 983 (1958), should not be considered in connection with this motion. To properly present the motion, appellees deem it necessary to restate such facts and procedural history as do appear in the record.

This matter is an attempted appeal from a decision of the Supreme Court of the State of Minnesota in a civil declaratory judgment action that one who has been convicted of first-degree murder is not entitled, pursuant to *Minnesota Statutes*, §525.87,[1] and the common law of the State of Minnesota, to collect the benefits of insurance policies insuring against the accidental death of the murdered person. *Travelers Insurance Company v. Thompson*, 163 N.W.2d 289 (Minn. 1968). The decision does not determine the rights, if any, of the victim's minor children to the benefits of those policies.

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[1] *Minnesota Statutes*, §525.87 (enacted 1917):

> "No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent, or take by devise or bequest from him any portion of his estate. No beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organizations, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued."

In an eleven months' period in 1962-1963, the appellant, Tilmer Eugene Thompson, an attorney at law specializing in criminal law, purchased from appellees insurance policies pursuant to which Thompson would receive $1,055,000.00 in the event of the accidental death of his wife, Carol Thompson. On March 3, 1963, Carol was brutally murdered. On December 6, 1963, Thompson was convicted of the first-degree murder of his wife.

In 1964, the appellees began the present declaratory judgment actions. However, by agreement among all of the parties, no further action was taken in respect to the civil proceedings until the determination of the murder case so as to spare Thompson any embarrassment (publicity or otherwise) with respect to the criminal proceedings.

Thus, appellees waited until long after Thompson's first-degree murder conviction was affirmed by the Minnesota Supreme Court, *State v. Thompson,* 273 Minn. 1, 139 N.W.2d 490 (1966), and after this Court had denied Thompson's petition for certiorari, *Thompson v. Minnesota,* 385 U.S. 817, 87 S.Ct. 39, 17 L.ed.2d 56 (1966), before they brought their motion for summary judgment before the District Court of the State of Minnesota.

The motion for summary judgment was heard on April 18, 1967, and was based upon the application of *Minnesota Statutes,* §525.87, to two established facts:

(1) T. Eugene Thompson was the named primary beneficiary in each of the policies of insurance, and

(2) T. Eugene Thompson had been indicted and convicted of the first-degree murder of the insured.

The trial court (Sylvestre, J.) concluded that it could not grant summary judgment in the absence of a positive decision by the Minnesota Supreme Court ruling that a final judgment of conviction for murder is to be given collateral estoppel effect in a subsequent civil action as to the issues of

fact necessarily adjudicated against the person convicted. The trial court accordingly denied the motion for summary judgment but certified the question as being important and doubtful, thus permitting immediate appeal to the Minnesota Supreme Court.

Thompson did not raise before the trial court any of the questions which appear in the jurisdictional statement filed in this Court.

The insurance companies appealed the order to the Minnesota Supreme Court. Thompson submitted a brief as respondent in that appeal and again did not raise in that brief any of the questions contained in the jurisdictional statement filed in this Court.

Strange to report that although Thompson's petition for certiorari had been denied by this Court on October 10, 1966, Thompson and his lawyers[2] waited until July 28, 1967, before they petitioned the United States District Court, District of Minnesota, for a writ of habeas corpus. Stranger still, although the federal district court immediately notified Thompson and his lawyers of a defect in the papers, they waited until March 15, 1968, before attempting to cure the defect. And, after the federal district court, Devitt, J., had dismissed the habeas corpus proceedings on May 7, 1968: *Thompson v. Tahash,* 286 F.Supp. 633 (D. Minn. 1968), Thompson and his lawyers waited until October 13, 1968, before they petitioned the District Court of the State of Minnesota for post-conviction relief.

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[2]F. Lee Bailey (no address), and Robins & Meshbesher, Minneapolis, Minnesota. In addition to these current lawyers, Thompson was represented by the following lawyers of his own choosing—all of whom are well respected and eminently qualified: Hyam Segel and William S. Fallon of Kelly, Segel & Fallon, Saint Paul, Minnesota (criminal trial); C. Paul Jones, Minneapolis, Minnesota (criminal appeal); Benedict S. Deinard and Allen I. Saeks of Leonard, Street and Deinard, Minneapolis, Minnesota (civil trial and appeal).

Meanwhile, the appeal of the civil matter was argued on March 25, 1968, and was decided on October 15, 1968: *Travelers Insurance Company v. Thompson*, 163 N.W.2d 289 (Minn. 1968), rehearing denied January 14, 1969.

A comparison of the foregoing dates reveals a rather unusual sequence of events and has led the appellees to the conclusion that this civil litigation has been used, and is being used, as a cat's paw with respect to Thompson's post-conviction campaign. This conclusion is fortified by the fact that well over 50% of the matter contained in Thompson's Appeal Jurisdictional Statement is, purely and simply, a direct attack on his criminal conviction and has nothing to do with the issues involved in this civil litigation. Thompson's Appeal Jurisdictional Statement is, in reality, a second petition for certiorari in respect to the criminal conviction.

It follows that appellees, as private parties in a civil lawsuit, will not respond to Thompson's attack upon the validity of his conviction—except to point out that Thompson's characterization of the criminal proceedings is unsupported by anything in the record and is, to say the least, hyperbole as distinguished from truth.

Equally untruthful are Thompson's repeated assertions that the trial judge refused to grant summary judgment in favor of appellees because he believed that Thompson had not had a fair criminal trial, that Thompson's criminal conviction was not "final" for res judicata purposes, and that a judgment for appellees would violate Thompson's constitutional rights (Appeal Jurisdictional Statement, pp. 29-31). The *truth* is that the question of the fairness of the criminal trial was neither raised by Thompson nor considered by Judge Sylvestre in these proceedings—that Judge Sylvestre expressly ruled that the criminal judgment was a final judgment for res judicata purposes (A. 8-9)—and that no consti-

tutional question of any kind was either raised by Thompson or considered by Judge Sylvestre.

In its opinion herein, the Minnesota Supreme Court reversed the decision of the lower court and granted summary judgment in favor of appellees. The opinion does not discuss or decide any of the questions contained in Appellant's Jurisdictional Statement. The Court merely held that, as a matter of general law, (the doctrine of collateral estoppel) and not as an interpretation of any statute, a judgment convicting a beneficiary of the murder of the named insured is conclusive as to the result in a civil action brought on the policies of insurance where the facts and issues are identical in both actions.

The first reference by Thompson to the United States Constitution was made in a petition for rehearing filed with the Minnesota Supreme Court. On January 14, 1969, the Minnesota Supreme Court entered its order denying the petition for re-hearing without opinion, declining the invitation contained in Thompson's petition to "indicate in the form of its denial that it has carefully considered the claims of respondent [Thompson] in this Petition but has rejected them." (A. 48-49).

ARGUMENT

INTRODUCTION

In his Appeal Jurisdictional Statement, pp. 4-6, Thompson enumerates six supposed constitutional questions. Questions I, V, and VI challenge the constitutionality (equal protection; due process; right to jury trial; impairment of contract; IXth Amendment) of the doctrine of collateral estoppel. Questions II and V challenge the constitutionality (impairment of contract; due process; IXth Amendment) of *Minnesota Statutes*, §525.87. Question III attacks the de-

termination that Thompson's criminal conviction is a final judgment for res judicata purposes—but does not raise a constitutional question. Question IV challenges the constitutionality of the criminal conviction—but does not raise a constitutional question in respect to these civil proceedings. Thus, Questions III and IV are not relevant to any of the issues presented by the instant case, and Questions I and VI do not challenge the constitutionality of any statute of the State of Minnesota. It follows that only Questions II and V need be considered.

I. THE FEDERAL QUESTIONS RAISED BY APPELLANT HAVE BEEN PREVIOUSLY DECIDED ADVERSELY TO APPELLANT

Thompson claims that *Minnesota Statutes* §525.87, and the decision in *Travelers Insurance Company v. Thompson*, 163 N.W.2d 289 (Minn. 1968), impair his contract rights in violation of Article I, Section 10, of the Constitution of the United States. Thus, the question, simply stated, is whether a state may declare, pursuant to statute, that no beneficiary of a life insurance policy, who is convicted of the first-degree murder of the insured person, is entitled to the benefits of such policy even though the policy does not contain an express provision to that effect.

It is undoubted law that "the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms." *Von Hoffman v. City of Quincy*, 71 U.S. 535, 550, 18 L.ed. 403, 408 (1867); *Fleming v. Fleming*, 264 U.S. 29, 44 S.Ct. 246, 68 L.ed. 547 (1923).

Since *Minnesota Statutes*, §525.87, antedates the Thompson insurance contracts by some 42 years, the statute cannot impair the contracts. Further, even if the statute were brand new, the considerations of public policy embodied in the

statute would render the statute free from constitutional attack. As this Court said in *Home Building & Loan Association v. Blaisdell,* 290 U.S. 398, 434-35, 54 S.Ct. 231, 238-39, 78 L.ed. 413, 425-27 (1934):

> "Not only is the constitutional provision qualified by the measure of control which the State retains over remedial processes, but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.' *Stephenson v. Binford,* 387 U.S. 251, 276, 77 L.ed. 288, 301, 53 S.Ct. 181, 87 A.L.R. 721. Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against the impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while—a government which retains adequate authority to secure peace and good order of society."

And in *N. Y. & N. E. Railroad Co. v. Bristol,* 151 U.S. 556, 567, 14 S.Ct. 437, 440, 38 L.ed. 269, 272-73 (1893):

> "It is likewise thoroughly established in this court that the inhibitions of the Constitution of the United States upon the impairment of the obligation of contracts, or the deprivation of property without due process or of the equal protection of the laws, by the States, are not violated by the legitimate exercise of legislative power in securing public safety, health, and morals."

The Minnesota statute, as applied to the facts of the instant case, is merely declaratory of the universally-recognized common and civil law doctrine that the courts will not permit one to benefit by his own wrong. *E.g., N. Y. Mutual Life Insurance Co. v. Armstrong,* 117 U.S. 591, 6 S.Ct. 877, 29 L.ed. 216 (1886); *Sharpless v. Grand Lodge A.O.U.W.,* 135 Minn. 35, 159 N.W. 1086 (1916); *Austin v. United States,* 125 F.2d 816 (7th Cir. 1942); *Connecticut Fire Insurance*

Company v. Ferrara, 277 F.2d 388 (8th Cir. 1960); *Cleaver v. Mutual Reserve Fund Life Association,* 61 L.J.Q.B. 128, [1892] 1 Q.B. 147; Coke, Litt. 149b.

Certainly, it cannot be contended that a convicted murderer possesses a constitutional right to use the courts to enforce collection of the benefits of his crime. Nor can it be contended that a state statute, enacted and enforced to prevent the use of the courts for that purpose, is not a constitutional exercise of legislative power to secure public safety and morals.

Thompson also claims that the statute deprives him of his constitutional right to a jury trial. Of course, the statute does not do that. Apparently, what Thompson means is that the doctrine of collateral estoppel "deprives" him of the opportunity to relitigate the issue of his guilt before a second jury in a civil action. However, Thompson forgets that the Constitution does not guarantee a jury trial in civil actions in state courts. *Walker v. Saurinet,* 92 U.S. 90, 23 L.ed. 678 (1875); *Southern R. Co. v. Durham,* 266 U.S. 178, 45 S.Ct. 51, 69 L.ed. 231 (1924). Further, the doctrine of estoppel by verdict is based upon a full and complete jury trial of the contested issues. Thompson had such a jury trial.

In effect, Thompson is making the bizarre contention that a murderer who has had his full day in court is unconstitutionally penalized because he's had his full day in court. Thompson claims that had he forthrightly admitted his guilt, he would now be "free" to litigate his guilt in a civil action to determine whether he is entitled to the benefits of his admitted crime; but, because he was afforded every possible opportunity to require the State to prove such guilt beyond a reasonable doubt, he has been penalized because he is now not entitled to a "second day" in court to relitigate those same matters.

It should be noted that the Minnesota Supreme Court, in the instant case, did not have before it the issue of the construction of *Minnesota Statutes*, §525.87, where the beneficiary has pleaded guilty to first degree murder. That question is open in Minnesota. It may well be that the Minnesota Court, if and when such a case comes before it, will hold that the plea is conclusive. At the very least, such a plea is an admissible judicial admission of the most solemn nature and, absent some very unusual circumstances, would have the practical effect of foreclosing any serious litigation of the question of guilt in a subsequent §525.87 proceeding. See *Wischstadt v. Wischstadt,* 47 Minn. 358, 50 N.W. 225 (1891); *Klein v. Pasch,* 153 Minn. 291, 190 N.W. 338 (1922).

Even assuming that someone who has pleaded guilty to first degree murder might some day wish to litigate the question of his guilt in a §525.87 proceeding and assuming that the Minnesota Court would then hold the guilty plea is not a bar to such litigation, the learning of *United States v. Jackson,* 390 U.S. 570, 88 S.Ct. 1209, 20 L.ed.2d 138 (1968), is not pertinent.

In *Jackson,* this Court held that a criminal statute (the Lindbergh Law), which permits the court to impose a stiffer sentence (death) on one who is found guilty by a jury than may be imposed if the defendant pleads guilty or is tried by the Court without a jury (imprisonment), is unconstitutional because it imposes an improper burden on a defendant who wishes his guilt determined by a jury. Apparently, Thompson reasons, from *Jackson,* that res judicata is likewise an improper "burden" which cannot be imposed upon someone like him who wishes to have his guilt determined by a trial.

The answer to Thompson's argument, of course, is that his analogy is not apt. Making the penalty for a crime dependent upon a waiver of a jury is far different from declaring

that one who litigates an issue is not entitled to relitigate that issue. The stiffness of a sentence and the determination of an issue are not the same thing. It is a matter of apples and oranges. The effect of a trial is the determination of issues, and an improper burden is not placed upon one who tries such issues by holding that the trial had the effect of determining those issues. See *Postal Tele. Cable Co. v. Newport,* 247 U.S. 464, 38 S.Ct. 556, 62 L.ed. 1215 (1918).

II. THE APPEAL WAS NOT TAKEN IN CONFORMITY TO TITLE 28, UNITED STATES CODE, §1257(2) AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION; AND THE JUDGMENT RESTS UPON AN ADEQUATE NON-FEDERAL BASIS.

A. The Appeal Is Not within the Jurisdiction of This Court Because Not Taken in Conformity to Title 28, U.S.C. §1257(2).

(1) The Questions Presented Do Not Challenge the Validity of Any Minnesota Statute on the Ground of Its Being Repugnant to the United States Constitution and Thus Do Not Meet Jurisdictional Requirements of §1257(2).

Thompson has attempted to obtain review of the judgment of the Minnesota Supreme Court by appeal rather than certiorari, designating Title 28, *U.S.C.,* §1257(2), as the statutory basis for jurisdiction by appeal. That section and subdivision require, for an appeal to have been providently made, that the appellant "question the validity of a statute of any state on a ground of its being repugnant to the Constitution, treaties or laws of the United States * * *."

As indicated, of the six questions framed in appellant's Appeal Jurisdictional Statement, only questions II and V even make reference to a statute of the State of Minnesota.

The other questions framed by appellant refer only to the application by the Minnesota Court of the general law of collateral estoppel and clearly do not pretend to relate to any statute.

In question II appellant attempts to raise a constitutional issue by first implying as a premise that the Minnesota Supreme Court's decision granting summary judgment was based upon its interpretation of *Minnesota Statutes*, §525.87, and then inquiring whether such an interpretation of that statute unconstitutionally impairs the obligation of the contracts between appellant and the appellees. It is clear that the decision of the Minnesota Supreme Court, which precludes relitigation of the fact issues of appellant's guilt of the murder of his wife, is not based upon a construction or interpretation of any statute, but rather is based upon a simple application of the general law of collateral estoppel. The Court obviously relies upon *Minnesota Statutes*, §525.87, merely as the basis for disqualifying a beneficiary who "feloniously causes the life of the insured to be taken" and does not rely upon that statute as indicating the manner in which the fact question of the felonious guilt for causing the life to be taken shall be established. The statute, insofar as it pertains to insurance, neither adds nor detracts from the common law rule previously declared by Minnesota Supreme Court in *Sharpless v. Grand Lodge A.O.U.W.*, 135 Minn. 35, 159 N.W. 1086 (1916).

The same reasons destroy the premise for Thompson's attempt to challenge the constitutionality of *Minnesota Statutes*, §525.87, in question V, where he urges that the Court's interpretation denied him the right to fair treatment and due process as guaranteed by the Constitution because the insurance companies would not have been precluded from relitigating the question of appellant's guilt for the murder by a verdict of innocence in the criminal trial.

Even if the decision of the Minnesota Court granting summary judgment could fairly be considered an "interpretation" of *Minnesota Statutes,* §525.87, jurisdiction still would not exist. The observations of this Court in *Central Land Co. v. Laidley,* 159 U.S. 103, 109-10, 16 S.Ct. 80, 82, 40 L.ed. 91, 94 (1895), are directed precisely to that point:

> "The appellate jurisdiction of this court, upon writ of error to a state court, on the ground that the obligation of a contract has been impaired, can be invoked only when an act of the legislature alleged to be repugnant to the constitution of the United States has been decided by the state court to be valid, and not when an act admitted to be valid has been misconstrued by the court. * * * If this court were to assume jurisdiction of this case, the question submitted for its decision would be, not whether the statute was repugnant to the constitution of the United States, but whether the highest court of the State has erred in its construction of the statute."

(2) The Minnesota Supreme Court Did Not Pass upon the Validity of Minnesota Statutes, §525.87, and Thus the Questions Presented Do Not Meet the Jurisdictional Requirements of §1257(2).

Jurisdiction under §1257(2) requires not only that the validity of a state statute be challenged, but also that the state court's "decision is in favor of validity." As indicated, no challenge was made with respect to the validity of *Minnesota Statutes,* §525.87, until the petition for rehearing was filed in the Minnesota Supreme Court. Although the Minnesota Supreme Court, by using the statute as part of the basis for decision, necessarily upheld its validity, such use of the statute does not come within the meaning of §1257(2) since it does not constitute upholding the statute over objection that it was repugnant to the Federal Constitution. See, *e.g., Harding v. Illinois,* 196 U.S. 78, 25 S.Ct. 176, 49 L.ed. 394 (1904), where this Court declined jurisdiction where it was

clear that the state court did not actually decide any federal question.

B. The Questions Raised in the Jurisdictional Statement Are Not Substantial and Thus Are Not Within the Court's Jurisdiction.

This Court has consistently held that an appeal under §1257 will not be permitted unless the constitutional question upon which jurisdiction depends is a substantial question. See *Zucht v. King,* 260 U.S. 174, 43 S.Ct. 24, 67 L.ed. 194 (1922).

In Part I above (motion to affirm), it was argued that the attempted constitutional challenge to the decision of the Minnesota court has either been considered and determined by prior decisions of this Court or is so lacking in merit as to require affirmance without further briefs or argument. Those arguments have equal relevance here to establish that the questions raised by appellant are at best insubstantial.

To the extent that Thompson challenges the validity of the disqualification concept embodied in *Minnesota Statutes,* §525.87 (as contrasted to a challenge to the use of collateral estoppel), his position is clearly frivolous. Again, reference is made to the decision of this Court as early as 1886 in *N. Y. Mutual Life Insurance v. Armstrong,* 117 U.S. 591, 6 S.Ct. 877, 29 L.ed. 997 (1886), holding, as a matter of general common law, that one who procures the death of an insured cannot recover as beneficiary under the insurance policy. This Court said:

> "It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had willfully fired." (117 U.S. 600, 6 S.Ct. 881, 29 L.ed. 1000.)

Obviously, *Minnesota Statutes*, §525.87, is merely a codification of the common law rule recognized in *N. Y. Mutual Life Insurance Co. v. Armstrong, supra*, and in the early decisions in nearly all states, including Minnesota. See, *Sharpless v. Grand Lodge A.O.U.W.*, 135 Minn. 35, 159 N.W. 1086 (1916), and cases collected in 5 Scott, *Trusts*, §492, p. 3497, n. 5 (3rd ed., 1967).

Thompson's claim that the application of collateral estoppel to a criminal judgment is somehow violative of due process or natural justice comes face to face with the fact that a significant number of jurisdictions require the same result, either by statute or court decision. Jurisdictions where this result is required by statute (in that the statute provides that one who is "convicted" is automatically disinherited or disqualified as a beneficiary) include California[3], Connecticut[4], Indiana[5], Louisiana[6], South Carolina[7], Texas[8], Utah[9], Virginia[10], District of Columbia[11], North Dakota[12], Oklahoma[13], and Kansas[14]. Jurisdictions where this result

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[3]West's Anno. Calif. Probate Code, §258.

[4]Conn. P.A. 1965 C. 514, §45.275.

[5]Title 6, Ind. St. Anno., §6-212.

[6]La. St. Anno., C.C. Arts. 996, 1560, 1710.

[7]So. Car. Code 1962, §19-5.

[8]Vernon's Anno. Tex. St., §41(d).

[9]Utah C.A. 1953, §74-3-22.

[10]Va. C.A., §64-18.

[11]D. C. Code 1961, §18-109.

[12]N. Dak. Century Code Anno., §56-04.23.

[13]Okla. St. Anno. §231.

[14]Kan. St. Anno., §59-513.

is required by decision include Virginia[15], Pennsylvania[16], California[17], North Carolina[18], and the United States Court of Appeals for the Seventh[19] and Eighth Circuits[20].

(For reasons unknown to appellees, Thompson's Appendix omits a significant portion of the opinion of the Minnesota Supreme Court that discusses the above authorities. Appellees, accordingly, have printed the full opinion in an appendix hereto with the omitted portions in italics.)

Thompson claims that the Minnesota court improperly accorded finality to the criminal judgment since post-conviction proceedings were then and are now pending. Under the Minnesota rule, the criminal judgment became final for purposes of res judicata when it was entered by the District Court on December 6, 1963, despite the fact that an appeal could be and was thereafter taken. This rule is identical to that followed by this Court in connection with determining the effect of judgments of a federal court. See, *Railway Co. v. Twombly,* 100 U.S. 78, 25 L.ed. 550 (1879); *Deposit Bank v. Frankfort,* 191 U.S. 499, 24 S.Ct. 154, 48 L.ed. 226 (1903); *Refior v. Lansing Drop Forge Co.,* 134 F.2d 894 (6th Cir. 1943); *Straus v. American Publishers Assn.,* 201 Fed. 306 (2nd Cir. 1912), appeal dismissed 235 U.S. 716, 35 S.Ct. 197, 59 L.ed. 438; and *E. I. DuPont De Nemours v. Richmond Guano Co.,* 297 Fed. 580 (4th Cir. 1924).

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[15]Eagle, Star & British Dominions Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314 (1927).

[16]In re Greifer's Estate, 333 Pa. 278, 5 A.2d 118 (1939); Mineo v. Eureka Security Fire & Marine Ins. Co., 182 Pa. Super. 75, 125 A.2d 612 (1965); and In re Kravitz' Estate, 418 Pa. 319, 211 A.2d 443 (1965).

[17]Teitelbaum Furs, Inc. v. Dominion Ins. Co., 25 Cal. Rptr. 559, 374 P.2d 439 (1962).

[18]Taylor v. Taylor, 257 N.C. 130, 125 S.E.2d 373 (1962).

[19]Austin v. United States, 125 F.2d 816 (7 Cir. 1942).

[20]Connecticut Fire Ins. Co. v. Ferrara, 277 F.2d 388 (8 Cir. 1960).

Clearly, by the time the criminal judgment passed through all stages of direct appeal, with the denial by this Court of a writ of certiorari, constitutional impediments to the treatment of the judgment as final for purposes of collateral estoppel could no longer exist, even assuming that they could have existed at an earlier stage.

Thompson suggests that the use of the judgment of conviction as conclusive is not fair because he would not have been entitled to use a judgment of acquittal against the insurers. A judgment of acquittal would not have been binding against the insurers because (a) it would be a finding only that Thompson's guilt had not been shown beyond a reasonable doubt, which is different from the issue (proof of guilt by a mere preponderance of the evidence) presented in the civil case, and (b) due process would not permit the use of a judgment against one who was not a party to the prior action. See, *Postal Tele. Cable Co. v. Newport*, 247 U.S. 464, 38 S.Ct. 556, 62 L.ed. 1215 (1918). These reasons, however, do not prevent the use of the criminal judgment against Thompson, since the criminal finding against him had overcome a greater burden of proof and he was a party to the action. Due process or natural justice do not require mutuality of estoppel where the reasons for denying estoppel in one direction do not exist with respect to its use in another direction.

C. The Decision of the Minnesota Court Is Based upon the Adequate Non-federal Ground of Collateral Estoppel.

It is clear that the decision of the Minnesota Supreme Court granting summary judgment against Thompson was based upon an application of the general law of res judicata and more particularly that form of res judicata known as collateral estoppel. After discussing generally the doctrine of collateral estoppel in conjunction with the historic com-

mon law rule that a criminal judgment does not constitute a bar to a subsequent civil action based upon the offense of which the party stands convicted, the Minnesota Court held:

> "We agree with appellants [insurers] that the judgment of conviction in the criminal case is conclusive as to the result of the civil action before us to determine respondent's rights to the proceeds of the insurance policies on the life of his deceased wife. We are constrained to the view that to permit a re-trial of the facts and issues already determined in the criminal proceeding would be an imposition on the courts and only tend to embarrass or bring into disrepute the judicial process." (163 N.W.2d 294.)

This Court has repeatedly held that questions of res judicata are ordinarily questions of general law which do not present any federal constitutional question. See, *Chouteau v. Gibson*, 111 U.S. 200, 4 S.Ct. 340, 28 L.ed. 400 (1884); *Enterprise Irrigation District v. Canal Co.*, 243 U.S. 157, 37 S.Ct. 318, 61 L.ed. 644 (1917); *Northern Pacific Railroad v. Ellis*, 144 U.S. 458, 12 S.Ct. 724, 36 L.ed. 504 (1892); *Adams v. Louisiana Board of Liquidators*, 144 U.S. 651, 12 S.Ct. 756, 36 L.ed. 578 (1892); *San Francisco v. Itsell*, 150 U.S. 65, 14 S.Ct. 20, 37 L.ed. 999 (1890); *Kenney v. Craven*, 215 U.S. 125, 30 S.Ct. 64, 54 L.ed. 122 (1909); and *Postal Tele. Cable Co. v. Newport*, 247 U.S. 464, 38 S.Ct. 556, 62 L.ed. 1215 (1918).

With respect to Thompson's claim that the Minnesota Court improperly accorded finality to the judgment of conviction for purposes of collateral estoppel in this action, the complete answer is that the determination of finality for purposes of collateral estoppel is solely a matter of state law so long as due process is not violated. In any event, as indicated earlier, the Minnesota rule with respect to finality

for purposes of collateral estoppel is consistent with the rule of this Court in connection with federal judgments and is surely satisfied by a judgment as to which all direct rights of appeal have been exhausted.

III. THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE NOT TIMELY OR PROPERLY RAISED, OR EXPRESSLY PASSED ON.

It is the law of Minnesota that— "A person who thinks that his constitutional rights are invaded by an act of the legislature * * * must raise the objection at the earliest available opportunity * * * before he will be permitted to make an attack on the constitutionality of a statute." *Adelman v. Onischuk,* 271 Minn. 216, 231, 135 N.W.2d 670, 680 (1965), appeal dismissed, certiorari denied, 382 U.S. 108, 86 S.Ct. 257, 15 L.ed.2d 192 (1965). It is also the law of Minnesota that failure to notify the Attorney General pursuant to *Minnesota Rules of Civil Procedure,* Rule 24.04[21],

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[21] Minnesota Rules of Civil Procedure, Rule 24.04 (effective 1951):

> "When the constitutionality of an act of the legislature is drawn in question in any action to which the state or an officer, agency or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof within such time as to afford him an opportunity to intervene."

Minnesota Rules of Civil Appellate Procedure, Rule 144 (effective February 1, 1967), provides:

> "When the constitutionality of an act of the legislature is drawn in question in any proceeding in the Supreme Court to which the state, or an officer, agency, or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof."

The Minnesota Supreme Court Advisory Committee's Note to Rule 144 states:

> "This rule is similar to P. Fed. R. App. P. 44. The notice required by this rule must be given upon appeal even though the party has previously notified the attorney general pursuant to Minn. R. Civ. P. 24.04 while the matter was in the trial court. If the proper notice was not given to the attorney general pursuant to Rule 24.04, the Supreme Court will refuse to review the constitutional question on appeal unless the constitutional question pertains to the lack of jurisdiction of the court. Campbell v.

prevents a consideration of any constitutional issue on appeal. *Oak Center Creamery Company v. Grobe,* 264 Minn. 435, 119 N.W.2d 729 (1963); *Lowe v. Patterson,* 265 Minn. 42, 120 N.W.2d 313 (1963); *State v. Oak Center Creamery Company,* 269 Minn. 505, 131 N.W.2d 621 (1964); *Campbell v. Glenwood Hills Hospitals,* 273 Minn. 525, 142 N.W.2d 255 (1966). It is also the law of Minnesota that issues not presented to or passed upon by the District Court will not be considered by the Supreme Court. *E.g., Becchetti v. Bakke,* 274 Minn. 85, 142 N.W.2d 288 (1966); *Kelmar v. District Court of Fourth Judicial District,* 269 Minn. 137, 130 N.W.2d 288 (1964). And it is also the law of Minnesota that where points specified in a petition for rehearing appear for the first time in the petition and the case was neither tried below nor argued in the Supreme Court on the theory presented by the petition, the Supreme Court will not consider such theory. *Lentz v. Pearson,* 246 Minn. 145, 74 N.W. 2d 662 (1956).

From the very beginning of the civil declaratory judgment action it was quite clear to all concerned that appellees contended that, pursuant to *Minnesota Statutes,* §525.87, and the common law of the State of Minnesota, Thompson's first-degree murder conviction conclusively prevented him from recovering the benefits of the policies. If Thompson or his many lawyers believed that the statute or the doctrine of collateral estoppel involved a federal question, they were mighty quiet about it. Since Thompson and his attorneys failed, in any way, to inform the parties or the Attorney General of Minnesota or the District Court of Minnesota or the Supreme Court of Minnesota of any intent to raise a federal question prior to the Minnesota Supreme Court's decision,

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Glenwood Hills Hospitals, 273 Minn. 525, 142 N.W.2d 255 (1966); Oak Center Creamery Co. v. Grobe, 264 Minn. 435, 119 N.W.2d 729 (1963). In original proceedings in the Supreme Court, notice pursuant to this rule is sufficient."

Thompson was, by Minnesota law, foreclosed from challenging the constitutionality of the statute in Minnesota.

Since state law controls the method and manner of raising federal questions in state courts, and since a state's refusal to consider federal questions which are raised for the first time in a petition for rehearing is a reasonable and proper rule, and since Minnesota refuses to consider such matters which are raised for the first time in a petition for rehearing, it follows that Thompson is foreclosed from raising federal questions in this Court because of his failure to do so properly in the courts of Minnesota. *Godchaux Co. v. Estopinal,* 251 U.S. 179, 40 S.Ct. 116, 64 L.ed. 13 (1919); *American Surety Co. v. Baldwin,* 287 U.S. 156, 53 S.Ct. 98, 77 L.ed. 231 (1932); *Gt. Northern Ry. v. Sunburst Co.,* 287 U.S. 358, 53 S.Ct. 145, 77 L.ed. 360 (1932); *Radio Station WOW v. Johnson,* 326 U.S. 120, 65 S.Ct. 1475, 89 L.ed. 2092 (1945); *Edelman v. California,* 344 U.S. 357, 73 S.Ct. 293, 97 L.ed. 357 (1953).

Also, it is the rule that federal questions which were not considered by the state courts are not before this Court for review. *Fullerton v. Texas,* 196 U.S. 192, 25 S.Ct. 221, 49 L.ed. 443 (1905); *Consol. Turnpike Co. v. Norfolk & Ry. Co.,* 228 U.S. 326, 33 S.Ct. 510, 57 L.ed. 857 (1912). As Thompson concedes in his Appeal Jurisdictional Statement, p. 33, the Minnesota Supreme Court did not state in its order denying Thompson's petition for rehearing that it had considered and passed on the federal questions which were raised in the petition. Thus, there is nothing before this Court for review.

CONCLUSION

It is believed that the best summary of this case may be found in the concluding paragraph of the opinion of the Minnesota Supreme Court:

> "We accordingly view the particular judgment of conviction in the context of the facts and issues found in the original proceedings, which have been fully determined by the trial court and affirmed by this court on appeal. The record of the criminal proceedings fully establishes that respondent [Thompson] had an untrammeled right to fully litigate the issues which are identical to those in the action before us. An examination of the record satisfies us that he had every opportunity and incentive to litigate the issue of his guilt. He was himself an experienced lawyer and was afforded all of the protections which surround the modern-day defendant in a criminal trial. The case was decided against him so as to satisfy the burden of proof beyond a reasonable doubt. Full hearings were accorded respondent in post-trial proceedings preliminary to appeal, and the record of the trial and such proceedings were reviewed by this court in an exhaustive and comprehensive opinion; on application by respondent to the Supreme Court of the United States, certiorari was denied. It seems to us that under the circumstances the requirement of finality for the application of the principles of res judicata has been fully satisfied. (163 N.W. 2d 296)."

The appellees respectfully request this Court to affirm on the ground that *Minnesota Statutes,* §525.87, does not impair an obligation on the insurance contracts involved herein; or, in the alternative, to dismiss the appeal on the grounds that the application of the doctrine of collateral estoppel herein does not involve a federal question, that the decision of the Minnesota Supreme Court rests on an adequate non-federal basis, and that the federal questions which Thompson seeks to raise were not timely or properly raised

in the Minnesota courts and consequently were not considered below.

Respectfully submitted,

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APPENDIX

MINNESOTA SUPREME COURT

No. 111 Ramsey County Murphy, J.

Travelers Insurance Company, Continental Casualty Company, Time Insurance Company, Edward Ernest Nelson, an underwriter at Lloyd's, London, and Zurich Insurance Company,

Appellants,

40903-4-5 and 40907-8 vs.

T. Eugene Thompson,

Respondent,

Otto Swoboda, Spec. Admr. of Estate of Carol S. Thompson, deceased, et al.,

Respondents.

Otto Swoboda, Spec. Admr. of Estate of Carol S. Thompson, deceased, and T. Eugene Thompson,

Respondents,

40906 vs.

General Accident Fire & Life Assurance Corporation, Ltd.,

Appellant.

Endorsed. Filed October 25, 1968. Mae Sherman, Clerk Minnesota Supreme Court

SYLLABUS

1. The general common-law rule that a conviction precludes neither the bringing of a civil action by a convicted person nor an attempt to prove that he is innocent of the offense is subject to the exception that where a convicted defendant attempts by subsequent civil litigation to profit from his own crime the judgment of conviction in the criminal case is conclusive as to the result of the civil action where the facts and issues in both are identical.

2. Minn. St. 525.87, which provides that one who "feloniously" takes the life of another shall not profit from his own wrong, declares and establishes the policy which prohibits a murderer from profiting from the death that he has feloniously caused and, as applied to the facts herein recited, comprehends one who has been convicted of an intentional killing.

3. The fact that the conviction in a criminal action is not "final" in the true sense because one who is wrongfully deprived of his liberty in a criminal action may at any time have review of an error growing out of denial of a basic constitutional right does not apply to an attempt by such convicted person to recover in a civil action any part of the estate of one whose death he has feloniously caused or to recover the proceeds of insurance policies issued to that person. Once it is decided that a conviction in a criminal case is conclusive as to facts and issues determined by the conviction, principles of public policy and the interests of litigants require that parties who had a full opportunity to litigate the issues should not be permitted to reopen and review such facts and issues in subsequent civil litigation.

Reversed.

OPINION

MURPHY, Justice.

This is an appeal from a denial by the Ramsey County District Court of appellant insurance companies' motion for summary judgment. Appellants sought declaratory relief with regard to their liabilities on a number of insurance policies purchased by respondent, T. Eugene Thompson, on the life of his deceased wife, whom he was convicted of murdering. The district court certified as important and doubtful the question of whether Thompson's 1963 conviction of first-degree murder of his wife is conclusive so as to bar his claim as a beneficiary of the insurance policies.[1] The facts in the prior criminal case are set out in detail in our opinion affirming Thompson's conviction.[2] Only those facts which are germane to a determination of the present civil action will be related here.

On the morning of March 6, 1963, Carol Thompson was beaten and stabbed to death in her St. Paul home. Evidence collected at the scene of the crime led to the arrest in Arizona of one Dick W. C. Anderson. Anderson confessed to the murder and implicated several other parties, among whom were Norman Mastrian and respondent. Anderson's testimony at the trial was that he was approached by Mastrian on March 3, 1963, and asked "if he was interested in killing a woman"; Anderson also testified that when questioned Mastrian admitted that "insurance was involved."[3] Richard Sharp, one of the men implicated in the conspiracy, testified that Mastrian had earlier offered the job to him, describing

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[1]Rule 103.03(i), Rules of Civil Appellate Procedure.

[2]State v. Thompson, 273 Minn. 1, 139 N.W.(2d) 490, certiorari denied, 385 U.S. 817, 87 S.Ct. 39, 17 L. ed.(2d) 56.

[3]273 Minn. 8, 9, 139 N.W.(2d) 497, 498.

the victim as "a churchgoing woman with four children" and "heavily insured." [4]

The facts disclosed are that between February, 1962, and January, 1963, Thompson purchased nine term policies, totaling $1,055,000, on his wife's life. The policies were to expire on dates ranging from March 15, 1963, to April 9, 1967.[5] In each of the policies Thompson was the named beneficiary. His explanations for acquiring this unusual amount of term insurance were (1) that since his wife would acquire in the event of his death $460,000 of insurance on his life and could expect to inherit $500,000 should her father die, he (Thompson) should be able to anticipate an equal amount in the event of his wife's death;[6] and (2) that "he had a premonition that his wife was going to have a tragic accident on February 8 or 9, 1963." [7]

There was testimony at the criminal trial to the effect that Thompson had been intimate with his secretary over a 2-year period from 1960 and that he had offered to marry her. The testimony showed, however, that his offers were rejected and that his secretary married another man in 1962. It appears that she last heard from Thompson at Christmas time in 1962, more than three months before the murder of Thompson's wife. The record fairly establishes that the overriding motive for the murder was to secure the proceeds of the insurance policies rather than the affair with the secretary.

1. It is agreed that Minn. St. 525.87 prevents one who has "feloniously" taken or caused the death of another from profiting from such wrongful act by inheriting from such

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[4] 273 Minn. 7, 8, 139 N.W.(2d) 497.

[5] See chart, 273 Minn. 39, 139 N.W.(2d) 517.

[6] 273 Minn. 6, 139 N.W.(2d) 496.

[7] Id.

person's estate or being a beneficiary of an insurance policy on the victim's life.[8] The core question here is whether a criminal conviction may be considered in a subsequent civil proceeding for the purpose of establishing the truth of the facts upon which the conviction was based. This question must be considered in the light of our prior decision which reviewed at length the issues and procedures involved in the criminal prosecution which resulted in respondent's conviction. It must be recognized that the facts set forth in that decision gave rise to both the criminal and the civil actions with which we are here concerned. The facts and issues in both actions are identical. The issues in the criminal case have been decided, reviewed, and affirmed on appeal. Appellant insurance companies contend that in the posture of these proceedings principles of "estoppel by judgment" or "collateral estoppel" require that the judgment in the criminal case be conclusive as to the issues raised in the civil case. Respondent contends, on the other hand, that because of the absence of the essential element of mutuality (the parties in the criminal proceedings not being the same as those in the civil proceedings) principles of estoppel may not be applied.

Collateral estoppel is a limited form of res judicata where-

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[8]Minn. St. 525.87 provides: "No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent, or take by devise or bequest from him any portion of his estate. No beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organizations, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued."

by a former judgment is conclusive in a later suit between the same parties or their privies as to determinative issues finally decided in the former suit. In Gollner v. Cram, 258 Minn. 8, 10, 102 N.W. (2d) 521, 523, 83 A.L.R. (2d) 971, 974, we said:

> "The doctrine of collateral estoppel (also referred to as estoppel by verdict) applies where it affirmatively appears that the issue presented has already been litigated in a prior suit between the same parties even though based upon a different cause of action. Unlike the situation where a former judgment acts as an absolute bar, it is an indispensable prerequisite to collateral estoppel that the issue involved be actually litigated and determined in the former suit."

The principle of collateral estoppel has been expressed in varying terms in Brooks Realty, Inc. v. Aetna Ins. Co., 268 Minn. 122, 128 N.W. (2d) 151; Anderson v. Mikel Drilling Co., 257 Minn. 487, 102 N.W. (2d) 293; Lustik v. Rankila, 269 Minn. 515, 131 N.W. (2d) 741. See, Annotation, 83 A.L.R. (2d) 977, 986; 10 Dunnell, Dig. (3 ed.), §§ 5161, 5162.

The general common-law rule has been that a criminal judgment is not admissible as evidence in a civil action to establish a fact determined in the criminal action nor does it constitute a bar to a subsequent civil action based upon the offense of which the party stands convicted and that the judgment of conviction is not admissible in evidence for that purpose. Wahl v. Walton, 30 Minn. 506, 16 N.W. 397; Annotations, 31 A.L.R. 261, 18 A.L.R. (2d) 1287, and 42 A.L.R. (2d) 634. It has been held that a conviction precludes neither the bringing of a civil action by a convicted person nor an attempt to prove that he is innocent of the offense. 30A Am. Jur., Judgments, §474; 50 C.J.S., Judgments, §754. In addition to the absence of mutuality in the second suit, other considerations which have influenced courts in so holding are that the judgment may not be conclusive of issues which

might have been litigated and determined in the initial action but which were not; failure or inadequacy of legal representation; the drawing of a wrong inference or misapplication of law which might give rise to an erroneous result; and the rule of evidence that the judgment in a criminal case is nothing more than the opinion of 12 jurors and, consequently, hearsay.

It is important to note that an exception to this rule has developed in situations where the convicted defendant attempts by subsequent civil litigation to profit from his own crime, as where an arsonist seeks to recover insurance proceeds for damage caused by the fire which he was convicted of setting, or where a beneficiary convicted of homicide seeks to recover under the victim's life insurance policy. In such situations courts have approached the problem from the point of view of the particular judgment offered as evidence, and have invoked the doctrine of collateral estoppel where the advantages to be derived from preventing relitigation would not be outweighed by the injustice that might result from foreclosing [the following italicized matter was omitted at page 32 of the Appendix in the Appeal Jurisdictional Statement] *attack on the prior determination. In the more recent cases where a convicted defendant has sought by civil action to profit from his own wrong, courts have not hesitated to apply the doctrine of collateral estoppel even though the parties to the two actions are not identical. Justification for overlooking the element of mutuality in the subsequent civil case is most often found in the rationale that objections to the application of collateral estoppel are not valid because the criminal conviction necessarily establishes that the requirement of a greater degree of proof has been met and because the party bound by it had every opportunity and incentive to litigate the issue. 1B Moore, Fed-*

eral Practice (2 ed.) par. 0.418[1]; 65 Harv. L. Rev. 818, 878; 5 Wigmore, Evidence (3 ed.) §1671a.

Courts have adopted various approaches in considering a judgment of conviction submitted in a subsequent civil action involving the same issues. These authorities reflect a uniform wariness on the part of courts about permitting one whose guilt has been fully determined by proof beyond a reasonable doubt to embarrass the judicial process by prevailing in a subsequent civil action involving the same facts and thereby to profit from the crime for which he was convicted. It appears that the courts of New York,[9] *Alabama,*[10] *Colorado,*[11] *and Kentucky*[12] *have held that a judgment of* conviction is admissible as evidence, normally prima facie, of the facts upon which it was based, but that it is not conclusive. Colorado has since adopted a statute changing this rule by specifically providing that the judgment of conviction is itself sufficient to disqualify the convicted heir from receiving property of the decedent through intestate succession.[13] The authorities which we choose to follow, and which control the facts in this case, have held that the judgment of conviction is conclusive in a subsequent civil action and include

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[9]*See, Schindler v. Royal Ins. Co.*, 258 N.Y. 310, 179 N.E. 711.

[10]*See, Sovereign Camp W. O. W. v. Gunn*, 224 Ala. 444, 140 So. 410; Id. 227 Ala. 400, 150 So. 491; Id. 229 Ala. 508, 158 So. 192; *Fidelity-Phenix Fire Ins. Co. v. Murphy*, 226 Ala. 226, 146 So. 387; Id. 231 Ala. 680, 166 So. 604.

[11]*See, North River Ins. Co. v. Militello*, 100 Colo. 343, 67 P.(2d) 625; Id. 104 Colo. 28, 88 P.(2d) 567.

[12]*See, Wolff v. Employers Fire Ins. Co.*, 282 Ky. 824, 140 S.W.(2d) 640.

[13]See, Colo. Rev. Stat. 1963, §153-2-13.

the jurisdictions of Virginia,[14] Pennsylvania,[15] California,[16] North Carolina,[17] and the United States Courts of Appeals for the Seventh[18] and Eighth Circuits.[19] These holdings have been applied in situations where a convicted defendant attempts to profit by his own wrong in a civil action even in the absence of the element of mutuality in the second suit.

The original decision adopting this approach is Eagle, Star & British Dominions Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314, which was an action on a fire insurance policy brought after the plaintiff had been convicted of having willfully burned the insured property with intent to defraud the insurer. The defense raised was that the conviction was an estoppel to the action. The court recognized that the judgment of acquittal would not have been binding on the insurance company because it would only be a finding that the plaintiff's guilt was not proved beyond a reasonable doubt and because the company was a stranger to the criminal action. With respect to the judgment of conviction, however, the court said (149 Va. 89, 140 S.E. 316):

> "* * * We confess our inability to perceive, however, why the accused person himself should not be held either as bound or affected by the result of the prosecution, if adverse to him. He has had his day in court, with the opportunity to produce his witnesses, to examine and cross-examine the witnesses for the prosecution, and to

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[14]See, Eagle, Star & British Dominions Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314.

[15]See, Greifer's Estate, 333 Pa. 278, 5 A.(2d) 118; Mineo v. Eureka Security Fire & Marine Ins. Co., 182 Pa. Super. 75, 125 A.(2d) 612; Kravitz Estate, 418 Pa. 319, 211 A.(2d) 443.

[16]See, Teitelbaum Furs, Inc. v. Dominion Ins. Co., 58 Cal.(2d) 601, 25 Cal. Rptr. 559, 375 P.(2d) 439.

[17]See, Taylor v. Taylor, 257 N.C. 130, 125 S.E.(2d) 373.

[18]See, Austin v. United States (7 Cir.), 125 F.(2d) 816.

[19]See, Connecticut Fire Ins. Co. v. Ferrara (8 Cir.), 277 F.(2d) 388.

> appeal from the judgment. So that the chief reason for holding that the plaintiff in the civil case is not bound by the prosecution fails as to the defendant, who has once litigated the identical question and had it adversely decided, under conditions most favorable to himself—that is, in a prosecution in which he could not have been convicted unless the decisive fact, his guilt, had been shown beyond a reasonable doubt."

The court distinguished prior cases as follows (149 Va. 105, 140 S.E. 321):

> "The precedents and the rules of exclusion which have been derived therefrom, which the trial court followed, have generally arisen in cases where one claiming to be injured by the criminal act of another had brought a tort action against the alleged wrongdoer for redress of that injury, most frequently in actions for personal injury—assault and battery. This, however, is not such a case. Here the plaintiff who brings this action has committed the felony, and seeks to recover the fruit of his own crime.
>
> "The rule of exclusion is a shield for the protection of those who have had no opportunity to assert their defense. To apply it here would be to convert it into a sword in the hands of one who has had such an opportunity, to be used by him for the effectuation of the same fraud which has been established, condemned and punished in the criminal case. If there be a rule which cannot stand the test of reason, it is a bad rule."

An impressive number of courts have followed the same rule, largely prompted by a public policy to discourage the use of courts in proceedings which, as the Virginia and New York courts have said, "would discredit the administration of justice, defy public policy and shock the most unenlightened conscience" and permit a possible result which would "encourage and give support to current thoughtless and carping criticism of legal procedure, and to justify the gibe that the administration of the law is the only remaining legalized lottery." 149 Va. 111, 140 S.E. 323; Schindler v. Royal

Ins. Co., 258 N.Y. 310, 313, 179 N.E. 711, 712. See, Austin v. United States (7 Cir.), 125 F.(2d) 816; Teitelbaum Furs, Inc. v. Dominion Ins. Co., 58 Cal. (2d) 601, 25 Cal. Rptr. 559, 375 P. (2d) 439; Connecticut Fire Ins. Co. v. Ferrara (8 Cir.), 277 F. (2d) 388; Fidelity-Phenix Fire Ins. Co. v. Murphy, 226 Ala. 226, 146 So. 387; Kravitz Estate, 418 Pa. 319, 211 A. (2d) 443; Griefer's Estate, 333 Pa. 278, 5 A. (2d) 118; In re Estate of Laspy (Mo.), 409 S.W. (2d) 725; Mineo v. Eureka Security Fire & Marine Ins. Co., 182 Pa. Super. 75, 125 A. (2d) 612; 5 Wigmore, Evidence (3 ed.), §1671a; 4 Wigmore, Evidence (3 ed.), §1346a. We agree with appellants that the judgment of conviction in the criminal case is conclusive as to the result of the civil action before us to determine respondent's rights to the proceeds of the insurance policies on the life of his deceased wife. We are constrained to the view that to permit a retrial of the facts and issues already determined in the criminal proceeding would be an imposition on the courts and only tend to embarrass or bring into disrepute the judicial process.

2. It is next contended by respondent that a reasonable interpretation of Minn. St. 525.87 necessarily prevents the court from adopting the rule that a conviction in a given homicide case may in a subsequent civil action be conclusive proof of the facts upon which it is based. This argument derives from language of §525.87, which states that no person who "feloniously" takes the life of another shall profit from his wrongful act. Respondent points out that statutes of this kind that existed in other states prior to the enactment of §525.87,[20] provided that persons who have been "finally con-

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[20]Compiled Laws of North Dakota 1913, §5683. "No person who has been finally convicted of feloniously causing the death of another shall take or receive any property or benefit by succession, will or otherwise, directly or indirectly, by reason of the death of such person, but all property of the deceased and all rights conditioned upon his death shall vest and be determined the same as if the person convicted was dead."

victed" or "convicted of feloniously causing the death of another" shall not profit by the wrongful act. Respondent characterizes the latter as a "conclusive" type of statute as opposed to §525.87, which is characterized as a "non-conclusive" type of statute. It is argued that because the term "feloniously" includes within its broad classification offenses in which intent may not be an essential element the term may not have the same application in both civil and criminal cases, and that if the interpretation suggested by appellants is adopted, one convicted of manslaughter or of criminal negligence resulting in death would necessarily come within the proscription of the statute.

We cannot share respondent's fears that the language of §525.87 warrants the conclusion suggested. The distinction between the two forms of statute—the one preventing recovery where there is a felonious killing and the other preventing recovery by one who was convicted of a felonious

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Neb. Rev. Stat. 1913, §1283. "No person who has been convicted of unlawfully killing another, or of conspiring unlawfully to kill another, shall take all or any portion of the property, real or personal, of the deceased, either by descent and distribution or by will; but the property to which the person so convicted would otherwise have been entitled shall go to the person or persons who would have taken the same if the person so convicted had been dead at the date of the death of the deceased."

Id. §1284. "No person who has been convicted of unlawfully killing another, or conspiring unlawfully to kill another, shall be entitled to any insurance on the life of the deceased. If the person so convicted is the beneficiary under any policy or policies of life insurance, or beneficial certificate or certificates, such insurance shall go to the person or persons who would have been entitled thereto if the person so convicted had been dead at the date of the death of the deceased."

Kan. Gen. Stat. 1915, §3856. "Any person who shall hereafter be convicted of killing or of conspiring with another to kill, or of procuring to be killed, any other person from whom such person so killing or conspiring to kill or procuring said killing would inherit the property, real, personal, or mixed, or any part thereof, belonging to such deceased person at the time of death, or who would take said property by deed, will or otherwise, at the death of the deceased, shall be denied all right, interest and estate in or to said property or any part thereof, and the same shall descend and be distributed to such other person or persons as may be entitled thereto by the laws of descent and distribution, as if the person so convicted were dead."

killing—is of little real importance since the determinative question is whether or not the killing was actually felonious. It must be kept in mind that these statutes declare and establish a policy which prohibits a murderer from profiting from a death that he wrongfully caused. It may be fairly assumed that the legislature intended to abrogate our holdings in Wellner v. Eckstein, 105 Minn. 444, 117 N.W. 830, and Gollnik v. Mengel, 112 Minn. 349, 128 N.W. 292. In each case a convicted murderer was held entitled to a share in his victim's property under the statutes of descent and distribution, Gollnik holding that because those statutes were unambiguous the court could not construe them to include an implied exception embodying the equitable principle that a wrongdoer should not be permitted to profit from his own crime. It seems to us that the legislatures enacting both types of statute were motivated by the same intention although they used different words to provide that the wrongdoer may not profit from his own crime. Moreover, it seems reasonable to us that in giving effect to that equitable rule the language used, describing such a wrongdoer as one who "feloniously takes or causes or procures another so to take the life of another," comprehends only those who have been convicted of intentional killing. Anderson v. Grasberg, 247 Minn. 538, 78 N.W. (2d) 450. It does not seem to us that the statute would warrant an interpretation that one convicted of negligent homicide would necessarily be barred from recourse to the courts in a subsequent civil action. The statute is meant to apply to those wrongdoers who intentionally cause the wrong and not to those who may have been negligent. See, Rosenberger v. Northwestern Mutual Life Ins. Co. (D. Kan.), 176 F.Supp. 379; Id. 182 F.Supp. 633.

3. It is next contended by respondent that the judgment of conviction cannot have conclusive effect in a subsequent civil action because a criminal conviction is no longer in the

true sense "final" even after review and affirmance by appellate courts. This argument derives from Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.ed. (2d) 837; Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.ed. (2d) 770; and Sanders v. United States, 373 U.S. 1, 83 S.Ct. 1068, 10 L.ed. (2d) 148, cases which Mr. Justice Harlan, dissenting, has characterized as a "trilogy of pronouncements" which "relegate to a back seat * * * the principle that there must be some end to litigation." 373 U.S. 23, 83 S.Ct. 1081, 10 L.ed. (2d) 166. This point may be briefly disposed of by observing that the foregoing authorities give to a convicted defendant who has been wrongfully deprived of his liberty in a criminal action the right at any time to have a review of any error growing out of the denial of a basic constitutional right. We do not understand that these holdings suspend operation of well-established rules of res judicata in civil cases. Once it is decided that the effect of the conviction in a subsequent civil case is conclusive, principles of public policy and the interests of litigants require that parties who had a full opportunity to litigate the issues should not be again permitted to reopen and review over and over again the civil aspects of the determination. 30A Am. Jur., Judgments, §§ 373, 326; 10 Dunnell, Dig. (3d ed.), §§ 5159, 5162.

We accordingly view the particular judgment of conviction in the context of the facts and issues found in the original proceedings, which have been fully determined by the trial court and affirmed by this court on appeal. The record of the criminal proceedings fully establishes that respondent had an untrammeled right to fully litigate the issues which are identical to those in the action before us. An examination of the record satisfies us that he had every opportunity and incentive to litigate the issue of his guilt. He was himself an experienced lawyer and was afforded all of the protections which surround the modern-day defendant in a criminal

trial. The case was decided against him so as to satisfy the burden of proof beyond a reasonable doubt. Full hearings were accorded respondent in post-trial proceedings preliminary to appeal, and the record of the trial and such proceedings were reviewed by this court in an exhaustive and comprehensive opinion; on application by respondent to the Supreme Court of the United States, certiorari was denied. It seems to us that under the circumstances the requirement of finality for the application of the principles of res judicata has been fully satisfied. Restatement, Judgments, §41.

Reversed.

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

THOMPSON *v.* TRAVELERS INSURANCE COMPANY ET AL.

APPEAL FROM THE SUPREME COURT OF MINNESOTA.

No. 1230. Decided May 19, 1969.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.